United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 76-4011

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

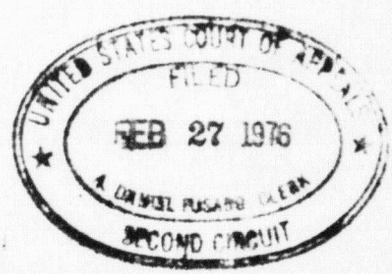
v.

LOCAL UNION NO. 584, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board,
Washington, D.C. 20570

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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Loc. Union No. 584, IBTCWHA

Case No.: 29-CD-171

1.16.74	Charge filed
2.5.74	Order Consolidating Cases and Notice of Consolidated Hearing dated
2.12.74	Local 447's request that hearing be rescheduled, dated
2.15.74	Order Rescheduling Hearing, dated
3.7.74	Order Rescheduling Hearing, dated
4.3.74	Hearing opened in 10(k) proceeding
4.10.74	Hearing closed
9.27.74	Complaint and Notice of Hearing, dated
10.24.74	Respondent's Answer, received
11.4.74	Hearing opened
11.4.74	Stipulation entered into by all parties at hearing
11.4.74	Hearing closed
4.28.75	Motion to Transfer Proceeding Directly to the Board, signed by all parties, filed
5.5.75	Board's Order Granting Motion and Transferring Proceeding to the Board, dated
10.28.75	Decision and Order issued by the National Labor Relations Board

221 NLRB No. 18

D-287
New York, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL UNION NO. 584, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	)	
and	)	Case No. 29-CD-171
THE HERTZ CORPORATION	)	

DECISION AND ORDER

Upon charges filed by The Hertz Corporation, herein called Hertz, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on September 27, 1974, against Local Union No. 584, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 584 or Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(b) (4) (ii) (D) of the National Labor Relations Act, as amended. In substance, the complaint alleges that the Respondent has violated the Act by engaging in threats to picket and to stop work at Hertz' service, repair, and maintenance facilities located at 5657 58th Street and 5624 58th Street, Maspeth, Queens, city and State of New York, with an object of forcing and requiring Hertz to continue to assign the work of servicing and repairing nonmilk trucks at the above facilities to employees who are members of Respondent rather than to employees who are members of Local Union No. 447 of District 15 of the International Association of Machinists and Aerospace Workers, AFL-CIO (herein called Local

447, IAM). The Respondent filed an answer to the complaint, denying the commission of any unfair labor practice.

A hearing was held on November 4, 1974, in the above-entitled proceeding before Administrative Law Judge Ivar H. Peterson of the National Labor Relations Board, at which time certain exhibits were received into evidence and certain stipulations were entered into on the record. Pursuant to the stipulations, the parties agreed that the current collective-bargaining agreement between The Hertz Corporation and Respondent Union, Local 584, be admitted into evidence as General Counsel's Exhibit 2. They further agreed to waive the filing of briefs to the Administrative Law Judge and to submit the matter directly to the Board.

Thereafter, on April 28, 1975, the parties filed a joint motion to transfer the proceeding directly to the Board in which they agreed that the record in this proceeding shall consist of the transcript and exhibits in the 10(k) hearing[1] in Cases 29–CD–170 and 29–CD–171,[2] the complaint, Respondent's answer,[3] and the transcript and exhibits in the instant case. They waived the issuance of an Administrative Law Judge's Decision and the filing of exceptions thereto, and moved that the Board issue its Decision and Order based upon the record. They requested that the Board set a time for the filing of briefs. Thereafter briefs were filed by the Respondent[4] and Local 447, IAM.

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[1] On July 23, 1974, in a proceeding pursuant to Sec. 10(k), the Board issued its Decision and Determination of Dispute (212 NLRB No. 71) in which it concluded that employees of Hertz who are represented by Local 447, IAM, were entitled to perform the disputed work.

[2] Case 29–CD–170 was severed from this proceeding on September 27, 1974.

[3] For purposes of the motion to transfer the case to the Board, Respondent amended its answer to admit that it had in fact engaged in the alleged 8(b) (4) (ii) (D) conduct.

[4] To the extent that Respondent's brief may be taken as a request for reconsideration of the Board's determination in the prior proceeding, such request plainly lacks merit and is hereby denied.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Employer

The parties stipulated that The Hertz Corporation is a Delaware corporation with its principal place of business located at 660 Madison Avenue, New York, New York, and with numerous other places of business, including garage maintenance facilities located at 5624 58th Street and 5657 58th Street, Maspeth, Queens, New York, and in all 50 States of the United States, where it is primarily engaged in the rental and lease of automobiles and trucks. During the past year it derived gross revenue from its lease and rental services in excess of $1 million and has purchased in excess of $50,000 worth of cars and trucks directly from firms located outside the State of New York. The parties stipulated and we find that Hertz is engaged in commerce within the meaning of the Act; and we find that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organizations Involved

The parties stipulated, and we find, that Local 447 and Local 584 are labor organizations within the meaning of Section 2(5) of the Act.

III. Unfair Labor Practices

A. *Background and Facts of the Dispute*

The Employer has had a series of collective-bargaining agreements with Local 447 since it took over the business of Metropolitan Distributors, Inc., herein called Metropolitan, in 1955. At that time, it assumed the then existing contract that Metropolitan had with Local 447. Prior agreements like the current agreement cover the approximately 300 maintenance mechanics

at all of the Employer's locations in the New York metropolitan area. The situs in dispute is located in the Long Island City district.

Sometime in late 1959 or 1960, negotiations took place between the Employer and Hegeman Holland Farms, sometimes referred to as Holland or Holland Farms, for a leasing arrangement for Holland's milk trucks. The Employer was made aware by Holland of an existing collective-bargaining agreement it had with Local 584 covering the approximately nine maintenance mechanics it utilized for service and repair of its milk trucks.

One of the conditions imposed by Holland in granting the lease was that Hertz assume the aforementioned collective-bargaining agreement with Local 584. The Employer sought and received the assent of Local 447 to assume the Local 584 agreement. When the Employer assumed the Local 584 agreement, it also took over the Holland garage for the purpose of maintaining servicing, and repairing nonmilk trucks in Holland's garage. While the number of trucks serviced and repaired at this garage has fluctuated over the years, at present there are approximately 160 milk trucks and 35 nonmilk trucks maintained and serviced at the Holland garage by about 20 mechanics who are members of Local 584. In late 1972, representatives of Local 447 reportedly first learned that Local 584 mechanics were performing work on nonmilk trucks at the Holland garage. At that time, Business Representative Ronald Touanen of Local 447 complained to Employer's personnel director, Roger Keehn, about the utilization of Local 584 mechanics to perform mechanical work on the nonmilk trucks. Touanen pointed out that the Employer's collective-bargaining agreement with Local 447 covers the maintenance mechanics at all of the Employer's locations in the New York metropolitan area. Keehn promised to discuss the matters again with Touanen, but never did. During the spring of 1973, Local 447 requested arbitration, but the request failed as the parties did not reach agreement on the selection of an

arbitrator. Also during the spring of 1973, the Employer and Holland entered into lease renewal negotiations. Holland insisted that it would not renew the lease unless the Employer ceased maintenance work on nonmilk trucks in the garage before approximately 54 new milk trucks were delivered. The Employer accepted this condition and planned to use a lot and garage facility[5] located across the street for the repair and maintenance of its nonmilk trucks. The new milk trucks were scheduled to be delivered during the fall of 1973; however, due to production delays, only 6 of the 54 trucks ordered have been delivered, with the remainder scheduled to arrive sometime in July of this year.

On November 7, 1973, Keehn requested that the parties hold a meeting for the purpose of resolving the imminent dispute over the assignment of the work in connection with the maintenance and repair of the nonmilk trucks. Present at the meeting were Keehn, for the Employer; Touanen, for Local 447; and Business Representatives Joseph Barone, for Local 584. According to Keehn, he was threatened with picketing by the business representatives of both Unions if the work in dispute were not awarded to employees who were members of their respective Unions.

B. *The Determination of The Dispute*

On July 23, 1974, the Board issued its Decision and Determination of Dispute assigning the disputed work to the Employer's employees represented by Local 447, IAM, and finding that Respondent was not entitled, by means proscribed by Section 8(b) (4) (D) of the Act, to force the Employer to assign the disputed work to employees represented by the Respondent.

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[5] This leased lot and garage has been used for storage and minor repairs.

C. *The Respondent's Refusal To Comply*

In addition to its threats to picket on or about November 7, 1973, the Respondent has refused and continues to refuse to comply with the Board's Decision and Determination of Dispute that it is not entitled to force or require the Employer to assign the disputed work to employees represented by it and that it notify the Regional Director to that effect.

D. *The Unfair Labor Practices*

As alleged in the complaint, the Respondent's amended answer and its refusal to comply with the Board's Decision and Determination of Dispute in this proceeding clearly show that Respondent's coercive threats of picketing and work stoppages at the Employer's above-described service, repair, and maintenance facilities had an object of forcing and requiring Hertz to continue to assign the work of servicing, maintaining, and repairing nonmilk trucks at its service facility located at 5657 58th Street, and at 5624 58th Street, Maspeth, Queens, city and State of New York, to employees who are members of Respondent Local 584 rather than to employees who are members of Local 447. The Respondent's admitted conduct at the above facility is proscribed by Section 8(b) (4) (ii) (D). Accordingly, we find that the Respondent violated the foregoing provision of the Act by engaging in the above-specified conduct.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occuring in connection with the operations of the Employer herein involved, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

The Remedy

Having found that the Respondent violated Section 8(b) (4) (ii) (D) of the Act, we shall order it to cease and desist therefrom and to take certain

affirmative action designed to effectuate the purposes of the Act.

Conclusions of Law

1. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent and Local 447 are labor organizations within the meaning of Section 2(5) of the Act.

3. By engaging in threats to picket and to cause work stoppages directed at Hertz with an object of forcing or requiring Hertz to continue to assign the work of servicing, maintaining, and repairing nonmilk trucks at its facilities located at 5657 58th Street and at 5624 58th Street, Maspeth, Queens, city and State of New York, to employees who are members of Respondent Local 584 rather than to employees who are members of Local 447, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b) (4) (ii) (D) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local Union No. 584, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, New York, New York, its officers, agents, and representatives, shall:

1. Cease and desist from threatening, coercing, or restraining The Hertz Corporation where an object theref is to force or require the said Employer to assign the work of servicing, repairing, or maintaining nonmilk trucks at its facilities located at 5657 and 5624 58th Street, Maspeth, Queens, city and State of New York, to employees represented by Respondent, rather than to employees represented by Local Union No. 447 of District 15 of the

International Association of Machinists and Aerospace Workers, AFL-CIO.

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Post at the business offices and meeting halls of the Respondent, New York, New York, copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms to be provided by the Regional Director for Region 29, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for Region 29 for posting by The Hertz Corporation, if willing, at all locations where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. October 28, 1975

Betty Southard Murphy, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the

National Labor Relations Board

An Agency of the United States Government

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify you that:

> WE WILL NOT threaten, coerce, or restrain The Hertz Corporation where an object thereof is to force or require said Employer to assign the work of servicing, repairing, or maintaining nonmilk trucks at its facilities located at 5657 and 5624 58th Street, Maspeth, Queens, city and State of New York, to employees represented by us, rather than to employees represented by Local Union No. 447 of District 15 of the International Association Machinists and Aerospace Workers, AFL–CIO.

LOCAL UNION NO. 584, INTERNATIONAL BROTHERHOOD OF TEAMSTERS' CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212-596-5386.

212 NLRB No. 71

D–8936

Brooklyn, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL UNION NO. 447 OF DISTRICT 15
OF THE INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL–CIO

and

Case 29–CD–170

THE HERTZ CORPORATION

LOCAL UNION NO. 584, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case 29–CD–171

THE HERTZ CORPORATION

DECISION AND DETERMINATION OF DISPUTE

This is a consolidated proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by the Hertz Corporation, herein called Hertz, that Local Union No. 447 of District 15 of the International Association of Machinists and Aerospace Workers, AFL–CIO, herein called Local 447; and that Local Union 584 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 584, violated Section 8(b) (4) (D) of the Act. Teamsters Local Union 584 and Machinists Local Union 447 were permitted to participate as Parties in Interest in Cases 29–CD–170 and 29–CD–171, respectively.

A hearing was held before Hearing Officer Elizabeth K. Johnson on April 3 and April 10, 1974. The Employer, Local 447, and Local 584 appeared at the hearing and were afforded full opportunity to be heard, to

examine and cross-examine witnesses, and to adduce evidence bearing upon the issues. Thereafter, Local 447 and Local 584 filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board makes the following findings:

I. The Business of the Employer

The parties stipulated that The Hertz Corporation is a Delaware corporation with its principle place of business located at 660 Madison Avenue, New York, New York, and with numerous other places of business including garage maintenance facilities located at 5624 58th Street and 5657 58th Street, Maspeth, Queens New York, and in all 50 States of the United States, where it is primarily engaged in the rental and lease of automobiles and trucks. During the past year it derived gross revenue from its lease and rental services in excess of $1 million and has purchased in excess of $50,000 worth of cars and trucks directly from firms located outside the State of New York. The parties stipulated and we find that Hertz is engaged in commerce within the meaning of the Act; and we find that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organizations Involved

The parties stipulated, and we find, that Local 447 and Local 584 are labor organizations within the meaning of Section 2(5) of the Act.

III. The Dispute

A. *Background and Facts of the Dispute*

The Employer has had a series of collective-bargaining agreements with

Local 447 since it took over the business of Metropolitan Distributors, Inc., herein called Metropolitan, in 1956. At that time, it assumed the then existing contract that Metropolitan had with Local 447. Prior agreements like the current agreement cover the approximately 300 maintenance mechanics at all of the Employer's locations in New York metropolitan area. The situs in dispute is located in the Long Island City district.

Sometime in late 1959 or 1960, negotiations took place between the Employer and Hegeman Holland Farms, sometimes referred to as Holland or Holiand Farms, for a leasing arrangement for Holland's milk trucks. The Employer was made aware by Holland of an existing collective-bargaining agreement it had with Local 584 covering the approximately nine maintenance mechanics it utilized for service and repair of its milk trucks.

One of the conditions imposed by Holland in granting the lease was that Hertz assume the aforementioned collective-bargaining agreement with Local 584. The Employer sought and received the assent of Local 447 to assume the Local 584 agreement. When the Employer assumed the Local 584 agreement, it also took over the Holland garage for the purpose of maintaining and servicing the leased milk trucks. About 6 months later, the Employer also started servicing and repairing non-milk trucks in Holland's garage. While the number of trucks serviced and repaired at this garage has fluctuated over the years, at present there are approximately 160 milk trucks and 35 non-milk trucks maintained and serviced at the Holland garage by about 20 mechanics who are members of Local 584. In late 1972, representatives of Local 447 reportedly first learned that Local 584 mechanics were performing work on non-milk trucks at the Holland garage. At that time, Business Representative Ronald Touanen of Local 447 complained to Employer's personnel director, Roger Keehn, about the utilization of Local 584 mechanics to perform mechanical work on the non-milk trucks. Touanen pointed out that the

Employer's collective-bargaining agreement with Local 447 covers the maintenance mechanics at all of the Employer's locations in the New York metropolitan area. Keehn promised to discuss the matter again with Touanen, but never did. During the spring of 1973, Local 447 requested arbitration but the request failed as the parties did not reach agreement on the selection of an arbitrator. Also during the spring of 1973, the Employer and Holland entered into lease renewal negotiations. Holland insisted that it would not renew the lease unless the Employer cease maintenance work on non-milk trucks in its garage before approximately 54 new milk trucks were delivered. The Employer accepted this condition and planned to use a lot and garage facility[1] located across the street for the repair and maintenance of its non-milk trucks. The new milk trucks were scheduled to be delivered during the fall of 1973; however, due to production delays, only 6 of the 54 trucks ordered have been delivered, with the remainder scheduled to arrive sometime in July of this year.

On November 7, 1973, Keehn requested that the parties hold a meeting for the purpose of resolving the imminent dispute over the assignment of the work in connection with the maintenance and repair of the non-milk trucks. Present at the meeting were Keehn, for the Employer; Touanen, for Local 447; and Business Representative Joseph Barone, for Local 584. According to Keehn, he was threatened with picketing by the business representatives of both Unions, if the work in dispute was not awarded to employees who were members of their respective Unions. Both Touanen and Barone deny making any unlawful threat to compel the Employer to assign or reassign the work to employees represented by their respective labor organizations.

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[1] This leased lot and garage has been used for storage and minor repairs.

B. *The Work in Dispute*

The work in dispute is the maintenance and repair on non-milk trucks leased by the Employer which are serviced and repaired at its facilities located at 5657 58th Street and at 5624 58th Street, Maspeth, Queens, New York.

C. *Contentions of the Parties*

The Employer requests that the work in dispute be assigned to either Union but not to both Unions on a mixed assignment basis.

Local 584 contends that the disputed work should be assigned to its members because it has a contract with the Employer which covers this work; the Employer can operate his business more efficiently by using employees represented by Local 584; and the Employer's assignment, employee skills, and company practice favor the assignment to employees represented by Local 584.

Local 447 contends that the Board lacks the authority to hear and determine the dispute because, in view of the facts and conduct of the parties there is no reasonable cause to believe that Section 8(b) (4) (D) has been violat ed. Local 447 next contends that assuming, *arguendo,* that the dispute is properly before the Board for determination pursuant to Section 10(k), the Board should award the work to it on the basis of its contract with the Employer's assignment and preference.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b) (4) (D) has been violated.

As previously indicated, there is testimony that at the November 7 meeting between the Employer and the representatives of each Union, Business Representatives Touanen and Barone each threatened the Employer with picketing, the object of which was to force or require the Employer to assign the

disputed work to members of their respective labor organizations. Thus, we find reasonable cause to believe Section 8(b) (4) (D) has been violated and that the dispute is properly before the Board for determination pursuant to Section 10(k) of the Act.

E. *Merits of the Dispute*

1. Certification and bargaining agreements

Neither Union has been certified by the Board to perform the work in dispute.

The Employer is signatory to an agreement with Local 447 which provides, in pertinent part, that "The Company recognizes the Union as the sole bargaining agent for all of its employees coming under the classifications . . . Machinists, Mechanics . . . ."[2] The Employer also assumed an agreement which Holland had with Local 584 and which presently contains the following relevant clause: "This agreement shall cover every employee of the Employer employed in or about a milk distributing branch, pasteurizing plant, and garage in the Metropolitan area . . . ."[3] Thus both agreements contain language which could cover the work in dispute. However, at the time that Local 447 assented to the Employer's assumption of the agreement thatL 584 and Holland were parties to, it was, at least as disclosed by the record, understood that the work would encompass only the maintenance and servicing of the milk trucks at the Holland garage. Accordingly, we do not interpret the Local 584 agreement as a concession by Local 447 of any of the disputed work to Local 584. At the time of the assumption, it is clear that all maintenance, service, and repair work was being performed by employees

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[2] Local 447 Exh. 1, art. I, III.

[3] Local 584 Exh. 1, par. 3.

who were represented by Local 447. Inasmuch as the disputed work deals with the maintenance and servicing of non-milk trucks, the Employer's agreement with Local 447 more precisely provides for coverage of the disputed work.

2. Past practice

The Employer has been in the rental and leasing business of automobiles and trucks for at least 16 years and has, during that time, continuously utilized, to the extent practicable, the services of employees represented by Local 447 with the exception of this one dispute. Under these circumstances, we find that past practice weighs in favor of awarding the work to employees represented by Local 447.

3. Skills and Efficiency

The degree of skill necessary to perform the disputed work is present in the members of both labor organizations. There is also no indication that the Employer could operate its business more efficiently by using employees who are represented by one Union rather than those by the other.

The record further indicates that (1) the Employer's employees possess the necessary skills to perform the disputed work and (2) the Employer is satisfied with their performance.

We find that these factors favor neither labor organization.

Conclusions

Having considered all pertinent factors herein, we conclude that employees represented by Local 447 are entitled to perform the work in dispute. This award is consistent with the Employer's contractual obligations and its overall past practice. In addition, the Employer is satisfied with the performance of its employees, who possess the requisite skills for the type of work involved herein. Accordingly, on the basis of the entire record, we shall award the work in dispute to employees of The Hertz Corporation who are

represented by Local Union No. 447 of District 15 of the International Association of Machinists and Aerospace Workers, AFL–CIO, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

Determination of Dispute

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the foregoing and the entire record in this case, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. Employees of The Hertz Corporation who are currently represented by Local Union No. 447 of District 15 of the International Association of Machinists and Aerospace Workers, AFL–CIO, are entitled to perform the maintenance and repair of non-milk trucks leased by The Hertz Corporation and serviced and repaired at The Hertz Corporation's facilities located at 5657 58th Street and at 5624 58th Street, Maspeth, Queens, New York.

2. Local Union 584, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is not entitled by means proscribed by Section 8(b) (4) (ii) (D) of the Act to force or require The Hertz Corporation to assign the above work to individuals represented by Local Union 584, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local Union 584, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall notify the Regional Director for Region 29, in writing, whether or not they will refrain from forcing or requiring The Hertz Corporation, by means proscribed by Section 8(b) (4) (D) of the Act, to assign the work in dispute to employees represented by it rather than to employees represented by Local Union No. 447 of District 15 of the

International Association of Machinists and Aerospace Workers, AFL–CIO.

Dated, Washington, D.C.

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

PROCEEDINGS

3 JUDGE PETERSON: The hearing will be in order.

This is a formal hearing before the National labor Relations Board in the matter of Local Union No. 584, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the Hertz Corporation, Case No. 29-CD-171.

The Administrative Law Judge appearing in this matter is Ivar H. Peterson, P-e-t-e-r-s-o-n, and the first named is spelled I-v-a-r, 1717 Pennsylvania Avenue, NORTHWEST, Washington, D. C.

Will counsel and/or other representatives of the parties please state their appearances for the record?

For the General Counsel?

MR. EDELMAN: Appearing for the General Counsel, your Honor, is Howard Edelman.

MR. OBEL: Appearing for the Hertz Corporation, your Honor, is David I. Obel- O-b-e-l, 660 Madison Avenue, New York, New York 10021.

MR. SIMON: For the respondent Local 584, I.B.T., Cohen, Weiss & Simon, by Bruce H. Simon, 605 Third Avenue, New York, New York.

4 MR. ENGELHARD: Judge?

JUDGE PETERSON: Yes?

MR. ENGELHARD: Judge, if you please, my name is Sheldon Engelhard. I am appearing for Local Lodge 447, International Association of Machinists, AFL-CIO. The firm is Vladeck, Elias, Vladick, & Elias, 1501 Broadway, New York, New York.

JUDGE PETERSON: You said your last name was what?

MR. ENGELHARD: Engelhard.

JUDGE PETERSON: I see.

MR. ENGELHARD: Are are not listed as a party to the—in the

complaint or indeed as an interested party.

However, we do have an interest in this matter and were served with the notice of hearing and the complaint.

We are the party which is mentioned several places in the complaint and we are indeed involved in the decision of the Board in 212 NLRB No. 71.

It was in that decision that it was determined that the work involved belonged to our client, Local Lodge 447.

In that respect, and with that in mind, your Honor, we are appearing here today.

JUDGE PETERSON: All right.

MR. EDELMAN: Your Honor, as counsel for the General Counsel, I have no objection to the appearance under those circumstances by counsel for Local 447, except that since the complaint does not indicate that they are a party to the contract or a party in interest or any other party, I would submit that with respect to stipulations that may be arrived at, that they would have no ability to block any stipulation that would otherwise be agreed to by all parties.

That would be the position that I would take as counsel for the General Counsel.

JUDGE PETERSON: Oh, I think that would probably be right, Mr. Edelman.

Mr. Engelhard indicates that his client is an interested party. I see that in Paragraph 7 of the complaint, subparagraph (b), it is alleged that Local 447 is a labor organization and that in Paragraph 12, Local 447 is alleged to have requested Hertz assign the servicing of non-milk trucks to employees represented by Local 447.

So that it would appear to me that Local 447 is an interested party.

However, I am inclined to agree with you, Mr. Edelman, that the

stipulations going to the substantive matter relating to this complaint do not
6 make the participation or consent of Local 447–do not need such participation or consent.

If counsel for that organization feels otherwise with respect to any particular matter, why I will certainly be glad to hear from him and consider any position that he may state.

MR. EDELMAN: Yes, sir.

* * * * *

7 MR. EDELMAN: At this time, your Honor, I would like to state that in discussions prior to the opening of this hearing, counsel for Hertz, General Counsel and counsel for the respondent of – have agreed to stipulate the record of the 10K hearing, the 10K proceeding in this–that gave rise to this complaint in Case 19-CD-170 and w9-CD-171, which resulted in a Board decision reported at 212 No. 700.

Of course, that stipulation would include the exhibits, as well.

We are talking about the entire record.

8 JUDGE PETERSON: Yes, all right.

MR. EDELMAN: In addition, your Honor, counsel for respondent has agreed to stipulate for this proceeding only–actually I should say has agreed to amend his answer for this–and stipulation–for this proceeding only, and admit allegations No. 15, 16 and 16 of the compiaint

Counsel for respondent, counsel for Hertz and General Counsel have agreed to stipulate with respect to Paragraph 10 of the complaint, the present 584 contract into evidence, a copy of which we do not have at this time but we can submit following the close of this hearing.

We would like to have an exhibit number left open for that.

HEARING OFFICER: All right.

MR. EDELMAN: We would like to submit that contract as part of the stipulation.

We would also like to further stipulate that the unit contained in that contract is the same unit that was contained in the contract referred to in Paragraph 10 of the complaint.

JUDGE PETERSON: All right.

That is agreeable.

MR. ENGELHARD: If your Honor, please?

9 JUDGE PETERSON: Yes, Mr. Engelhard.

MR. ENGELHARD: With regard to the last stipulation with regard to the contract itself, I have not seen that contract.

I saw the previous contract I believe runs through 1973.

So I am presuming that there has been a succeeding contract of -- or there may be a succeeding contract which I believe may be immaterial and irrelevant.

I have not seen the contract going back to 1960.

With regard to that, even my limited capacity here, I would object to that unless I actually am afforded the opportunity to see the contracts and to compare them, certainly as to the recognition clause.

JUDGE PETERSON: Well, let me inquire, Mr. Edelman, are those documents available without too much difficulty?

MR. EDELMAN: Which documents are you referring to, your Honor?

JUDGE PETERSON: Well, the ones Mr. Engelhard has reference to.

MR. EDLEMAN: Are you talking before the 1960 contract?

MR. ENGELHARD: Yes.

10 JUDGE PETERSON: I didn't understand Mr. Edelman going to refer to anything going back that far.

MR. EDELMAN: No, I did not.

What I was referring to was the current contract, whatever it is. It is my information that the unit set out in the current contract is the same unit that was set out in the contract in existence in 1959 or 1960, that is, at the time Hertz assumed the collective bargaining agreement from Holland-Hegeman.

MR. ENGELHARD: Well, that is what I am objecting to.

Unless we actually see that this is the agreement, that there is a consistency between the current agreement and the one back that covered the employees in 1959 or 1960, I would object to that.

JUDGE PETERSON: Well, if any difficulties are involved in making those documents available to Mr. Engelhard?

MR. EDELMAN: I–I don't know. I would be willing to change the stipulation to stipulate to the admission of that contract that was executed–or that was in existence at the time if it is available and the parties are willing to stipulate to that.

JUDGE PETERSON: At what time?

11 MR. EDELMAN: At the time of the complaint, in 1959 or 1960.

In other words, we allege that in 1959 or 1960 agreement was made to assume a certain collective bargaining agreement.

JUDGE PETERSON: Yes, I see.

That's paragraph 10.

MR. EDLEMAN: Yes.

I would be willing to stipulate that the unit–I would be willing to stipulate into evidence that contract and let the unit speak for itself.

JUDGE PETERSON: Do you have that document available?

MR. EDELMAN: I do not. I don't have it available.

I don't know if either of the parties do, either.

MR. OBEL: I don't.

MR. SIMON: Your Honor, I can make available the form of the

stipulation which amends the 1971 to 1973 agreement and which, therefore, represents the current collective bargaining agreement.

I cannot make that representation with regard to the 1960 contract because I simply do not know if it is available.

12 This whole subject comes up in connection with an alleged – an allegation in the complaint dealing with the nature of the agreement assumed by Hertz.

It might serve the alternative purpose, if the General Counsel is not prepared to prove, and I believe he is not, that the contract between Holland and 584 then in existence covered the maintenance mechanic utilized in the service and repair of milk trucks at the Maspeth facilities.

That one way to obviate the difficulty would simply be to amend that allegation to remove the qualifying record–word–milk, from the complaint.

Alternatively, your Honor, I will seek to ascertain whether the 1960 agreement can be located.

But knowing of the proclivities of local unions to purge their files after six of seven years and similar proclivity on the part of our office to do something approaching the same, that might be somewhat more difficult then than merely amending the allegation to the complaint.

JUDGE PETERSON: What is your reaction to that, Mr. Edelman?

MR. EDELMAN: Well, I am not prepared to amend the allegation of the complaint.

My own position would be to, absent the submission of the 1960 agreement, to go along with the proposed stipulation, that being the current con-

13 tract in evidence.

The second stipulation that the unit set out in that is the same as the unit set out in the contract in existence in 1960, on the basis that the parties tell me that this is so.

JUDGE PETERSON: I see.

Well, I think that is acceptable. I would suppose that—well, I assume, therefore, that the reference to 1959 and 1960 in Paragraph 10 of the complaint is not based upon any examination of actual documents but upon what has been orally represented to you—

MR. EDELMAN: Yes.

JUDGE PETERSON: – by the parties to the agreement.

Is that correct?

MR. EDELMAN: Correct.

JUDGE PETERSON: All right.

Well, I think that is accepted. I will accept it, without prejudice, however, to Mr. Engelhard's position and at an appropriate time, should it arise, to adduce someting to the contrary.

MR. ENGELHARD: Thank you.

JUDGE PETERSON: Is that agreeable?

14 MR. ENGELHARD: Yes.

MR. EDELMAN: Your Honor, I believe that with these stipulations, the only paragraphs that are denied would be Paragraph 9, which, I believe, would be taken care of by the record; it would be Paragraph 12, which is also taken care of by the record; and then the conclusory paragraphs 19 and 20, which can be taken care of by a decision.

With those stipulations, your Honor, I do not believe that there is anything further for the General Counsel to prove or to put forth.

JUDGE PETERSON: If that is your view, why farbeit for me to say otherwise at this juncture at least.

Is there anything any other party needs or desires to introduce at this time?

MR. OBEL: I have nothing, your Honor.

MR. EDELMAN: With respect to the filing of a brief–

There is one thing, your Honor, before I forget it.

Would– I would move to strike that part of respondent's answer which alleges an affirmative defense on the basis that it is not relevant to the proceeding that we have before us but deals rather with the 10-K aspects of the matter, which have already been decided.

JUDGE PETERSON: Let us go off the record for a moment.

Off the record.

(Discussion off the record.)

JUDGE PETERSON: All right, gentlemen, back on the record.

Inasmuch as we have opened the record, the question now arises of what the future procedure should be.

* * * * *

PROCEEDINGS

HEARING OFFICER: The hearing will be in order.

This is a formal hearing in the matter of Local Union Number 447 of District 15 of the International Association of Machinists and Aerospace Workers, AFL-CIO, and the Hertz Corporation, case number 29-CD-170, and Local Union Number 854 –

MR. SIMON: 584.

HEARING OFFICER: 584, excuse me, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the Hertz Corporation, Case Number 29-CD-171.

The Hearing Officer – before the National Labor Relations Board.

The Hearing Officer appearing for the National Labor Relations Board is Elizabeth K. Johnson.

* * * * *

HEARING OFFICER: On the record.

Please correct the reference to Section 9 to Section 10K of the National Labor Relations Act. Will Counsel please state their appearance for the record?

For the company?

MR. OBEL: David I. Obel, O-b-e-l, no apostrophe, senior staff counsel, industrial relations, the Hertz Corporation, 660 Madison Avenue, New York, New York, 10021.

HEARING OFFICER: For Local Union Number 447?

MR. ENGLEHART: Vladeck, Elias, Lewis & Vladick, by Sheldon Englehart, of Counsel, 1501 Broadway, New York, New York, 10036.

HEARING OFFICER: For Local Union 584?

MR. SIMON: Cohen, Weiss & Simon, by Bruce H. Simon, 605 Third Avenue, New York.

HEARING OFFICER: Are there any other persons, parties or labor organizations in the hearing room at this time who claim an interest in this proceeding?

MR. EDELMAN: Well, I would like to at this time state my appearance on the record.

Howard Edelman, appearing as Counsel for the Region.

If I may, I would like to state briefly the purpose for my appearance.

That is to aid and assist the Hearing Officer in developing relevant evidence wherever appropriate. I am not here in an adversary position.

I am at the services of all the parties to this proceeding.

HEARING OFFICER: Thank you, Mr. Edelman. Are there any other appearances? Let the record show no response.

* * * * *

HEARING OFFICER: The stipulation is received. Is it possible to stipulate that there are no tri-lateral methods of voluntary adjustment of this

dispute? Mr. Obel?

MR. OBEL: I stipulate that there are no formal methods of adjustment.

HEARING OFFICER: No formal -- let's amend that to stipulate, the stipulation is that there are no formal tri-lateral methods of voluntary adjustment of this dispute.

Do you so stipulate, Mr. Obel, on behalf of the company?

MR. OBEL: I do.

HEARING OFFICER: Do you so stipulate, Mr. Englehart, on behalf of Local 447?

MR. ENGLEHART: Yes.

HEARING OFFICER: Do you so stipulate, Mr. Simon, on behalf of Local 584?

MR. SIMON: Yes.

HEARING OFFICER: The stipulation is received. Is it possible to stipulate that national defense is not involved in this dispute?

Do you so stipulate, Mr. Obel, on behalf of the company?

MR. OBEL: If by national defense, you mean the absence of government contracts, I so stipulate.

HEARING OFFICER: Correct. Do you so stipulate, Mr. Englehart, on behalf of Local 447?

MR. ENGLEHART: I will accept that representation.

HEARING OFFICER: Do you so stipulate, Mr. Simon?

MR. SIMON: Yes.

HEARING OFFICER: The stipulation is received. Could we go off the record now, please?

* * * * *

ROGER JOHN KEEHN,

a witness, called by and on behalf of the Employer, having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. OBEL

Q. Would you please state your title and business address, for the record? A. Personnel director, New York Region, Hertz Truck Division, business address, 222 South Marginal Road, Fort Lee, New Jersey.

Q. Could you tell us what the Hertz Truck division, New York Region, encompasses? A. It encompasses the boroughs of New York, Long Island, Westchester County and central to northern New Jersey, as our business area of operation.

Q. Is the region divided into geographic zones? A. Yes. The region is divided into nine districts, which are the basic profit center units or operating units of our – of the New York region.

Each district has a district manager, and he is responsible for the entire business operation in that geographic area.

Q. Can you identify the districts, please? A. Okay. I will give the district headquarters, locations.

Lodi, New Jersey, Newark, New Jersey, 23rd Street, in Manhattan. Christopher Street, Manhattan; Bronx, New York; New Hyde Park, New York.

Long Island City, New York. Rockaway Boulevard, New York, and Brooklyn, New York.

Q. In what district is the Maspeth facility located? A. The Long Island City district.

Q. I believe I neglected to ask you, Mr. Keehn, when you were employed? A. I was employed December 1st, 1973 – '71, excuse me.

Q. In your present position? A. Yes, in my present position.

Q. Can you tell us, please the nature of the truck division's business? A. We are engaged primarily in the business of leasing trucks to businesses,

and a smaller portion of our business is the rental, the daily rental of trucks to businesses and individuals, such as the week-end mover.

Approximately 70 to 80 percent of our revenue is from lease customers, and the rest would be from rental customers.

Q. Okay. A. Our business, what we offer to these customers, is full service leasing. That is we purchase the vehicle, lease it to them, and provide full maintenance and service on that vehicle. All they do is provide the driver.

Q. Approximately how many employees are employed in the New York region of the truck division? A. 668, at the last head count, I took.

Q. Approximately how many of these are union represented employees? A. Approximately 500.

Q. Could you tell us, please, what employees are union represented, and which by unions? A. Approximately 300 mechanics are represented by Local 447, skattered throughout the nine divisions that I have previously referred to.

Approximately 175, 180 utility men are represented by Local 272, a Teamster organization, and approximately 30 employees are represented by Local 584. These would also be mechanics who are repairing trucks.

Q. Where do the Local 584 represented employees work? A. Approximately twenty of them are located at the Maspeth facility, in the Long Island City district. Approximately seven or eight are located at another milk account, Queensborough Farms, located somewhere in Queens.

And another two or three are located at another milk account, located on the Island. The account is called Dairylea on Long Island, when I say the Island.

17 Q. The account is called what? A. Dairylea. And there are one or two other scattered employees, again to my knowledge, servicing milk accounts, in and around Queens area, to the best of my recall.

Q. Okay. Now, does Hergz have a collective bargaining relationship with Local 584? A. Yes, we do. It works this way. When we took over — when Hegeman-Holland agreed to lease vehicles from Hertz, which goes back as far as 1960, I understand, we assumed the collective bargaining agreements that they then had in force with Local 584.

Through the years, Hertz Corporation has authorized the Dairymen's League, I understand that to be an association of milk companies who bargain jointly with Local 584.

We authorized them to be our bargaining agents and adopted whatever contract they negotiated with the milk unions.

Q. Has Hertz signed these contracts? A. Yes, we have.

Q. Approximately how many contracts have there been, since 1960, if you can estimate for us? A. I am assuming they were generally three year pacts. That seemed to be the pattern until recently. So that would be perhaps six or seven. Five or six. Something of that nature. I don't know for a fact.

18 Q. In any event, several agreements? A. Yes.

Q. Can you tell us, please whether Hertz has had a collective bargaining

relationship with Local 447 of the Machinists? A. Yes. To be sure.

Q. Can you tell us what that has been, please? A. They have, for, I would estimate, oh, as long as Hertz has been in business, in the New York metropolitan area, Local 447 to my knowledge has represented the bulk of our mechanical employees, as I stated earlier.

People who are repairing, some three hundred people.

Q. Have there been successive collective bargaining agreements negotiated with that union? A. Yes, there have.

Q. The contract which you testified to, with Local 584, to what employees does that contract apply? A. To the employees employed at Maspeth – to all Local 584 employees, and that would be the employees employed at Maspeth, and particularly Dairylea, Queensborough, and these Skattered milk accounts, whose names escape me.

Q. That has been true ever since we took over – strike that. Has that been true ever since Hertz took over Hegeman-Holland? A. Yes.

19 Q. The contracts you have negotiated with, or Hertz has negotiated with Local 447, to what locations have those contracts applied? A. Well, to all nine districts that I previously referred to. Each district may have two or three locations within it.

And I believe I could state it this way, and I think it's accurate. The only exception would be the Maspeth facilities and the previously referred to locations where 584 employees are employed.

Q. All right.

Mr. Keehn, I didn't ask you to state for us the nature of your duties and responsibilities as personnel manager. Would you please do that, now? A. I am responsible for all of the hiring of personnel, for salary administration, and personnel administration matters throughout the region, and what is relevant here, I am the labor relations manager, in effect, for the New York

Region. So I am responsible for all labor relations matters throughout the region.

Labor relations matters are coordinated through me, and then in most cases I have a hand in them.

Q. In the course of the regular performance of your duties, do you have occasion to visit the districts in the New York region? A. Yes, frequently.

Q. Can you tell us, please, focusing in specifically on the locus of the dispute, please describe for us what the Maspeth location looks like? A. The Hegeman-Holland garage, I will refer to it as a garage, is a garage, and this is going to be a very crude estimate, I am not an architect.

And I haven't seen plans, but it is a garage, a large garage, that you would fit 25 or 30 trucks in, I would think.

And it's located on a larger piece of property that I understand is owned by Hegeman-Holland Farms, and it is part of a milk processing plant, and a loading dock platform where the dairy people load their trucks for delivery throughout the metropolitan area.

Q. What is the address of that location? A. That address is, oh my goodness now. I believe that it is 56-24 58th Street. 56-24 58th Street. Across the street immediately across the street, on the opposite corner, is another piece of property, a triangular, as I recall, piece of property, that is quite small.

It is enclosed by a fence. That property is leased from a firm by the name of Levitz, if I recall properly. Has been leased from them for ten or 15 years, as I understand it, by Hertz Corporation, and that has been basically a storage facility, an overflow facility, for trucks operating out of the Maspeth area.

Q. Well, let me stop you now and see if we can't proceed more slowly

here, question by question.

Could you tell us, please, how the property you have described as the Hegeman-Holland Barn, I believe, how is that used? What work is done there? A. Hegeman-Holland garage. Barn is sort of a jargon used in the industry.

It is a brick structure, not a farm structure.

Q. You have been there, haven't you? A. Yes, I have.

Q. Go ahead. A. Maintenance and repair work on the trucks leased to Hegeman-Holland are performed there. Maintenance and repair on trucks not leased to Hegeman-Holland is performed there also.

Q. Those would be the so-called nonmilk trucks? A. The so-called nonmilk trucks. The Hegeman-Holland milk fleet, consists of approximately 160 vehicles, that are leased from Hertz Corporation to Hegeman-Holland.

There are additionally, and have been and still are at this point being maintained at the same Hegeman-Holland garage, approximately 35 nonmilk trucks.

These are trucks that are leased to five or six different accounts, who are not connected with the milk industry.

John Stewart Furniture Company, Santini Brothers Moving and Storage are two that occur to me immediately.

Now, they had been – those vehicles, all of the vehicles previously referred to, have been maintained by 584 mechanics, in the Hegeman-Holland garage, for numerous years, it is my understanding.

Q. Let me ask you to describe in some detail for us, the use to which the property across the street has been put over these years?

And before you do that, let me ask you to tell us approximately how far in feet this piece of property is from the Hegeman-Holland garage? A. Fifty to 75 feet. No more than a hundred feet.

Q. Do you have to cross a street to get there? A. Yes, you do.

Q. Is that all you have to do? A. That is correct.

Q. Go ahead and tell us, please, in as much detail as you have, the uses to which that property has been put, over the years? A. As I stated earlier, the facility, as I understand it, has been used primarily as a storage facility. It is an enclosed lot.

23 Vehicles that have been running out of the Hegeman-Holland garage have been stored there, parked there overnight I think, might be a more accurate phrase.

If there were any mechanical problems with those vehicles, such as it wouldn't start in the morning, they would be started on that property, jump started.

I – running repairs, such as, or minor repairs, I think would be a more accurate phrase, would have been performed on some of these vehicles, as the need arose, if the vehicle could not be brought into the garage across the street.

A mirror might be replaced or something of this order. That is my understanding of the use of that facility.

The quanset hut that is on the property, I do not have direct knowledge that maintenance work has ever been performed within that quanset hut.

I can only surmise that its purpose in being there was to be a maintenance garage, because it is large enough and in fact we are in the process of equipping it now to serve just that purpose, to be a full-fledged maintenance garage, to house maintenance work.

Q. Go ahead. A. I also understand from research I have conducted,

24 that on a sporadic, very low volume basis, occasionally Hertz trucks might be rented, that is the Hertz yellow trucks that bear the Hertz name on it, may have been rented out of the – that small lot across the street.

Q. Would they – would any repair work have been done on them there? A. I would assume again if it were, it would have been in the nature of a running type repair. If the vehicle needed a jump start, it wouldn't start on a winter morning, or if there was something that had to be attended to immediately, it would be taken care of.

Q. And – A. I would not think major maintenance, but –

Q. What trucks have been stored and had minor repairs done to them at that location? A. I would say both nonmilk trucks and milk trucks.

Q. Who performed the repair work? A. 584 mechanics.

Q. Assigned out of the main – A. From across the street.

Q. From across the street? A. Yes.

Q. Now – A. The supervisor of the Maspeth garage is also the supervisor of that location. He is responsible for that location, also.

Q. Mr. Keehn, did there ever come a time when you had discussions with representatives of Local 447 concerning the work done at Maspeth? A. Yes.

Q. When was this? A. It would have been a series of continuing discussions, throughout the, I would say they probably began in late 1972, certainly early 1973, and if I may add some background to show how they occurred, in the last several years, Local 447 has suffered fairly substantial losses of membership, through attrition of the Hertz business.

Our business has been in financial, economic trouble for the past several years, and we have been engaging over this time in '71, '72, and '73, consolidation. Retrenchment.

We have closed numerous facilities, consolidated others. The net effect is that we have reduced our work force, primarily 447, through attrition.

I would estimate that in this period of time I specified, their membership declined, Hertz' membership declined by some 80 or 90 people.

The reason I mention this, is because this is my continuing responsibility, and on an almost daily or certainly weekly basis, I would have some cause to
26 discuss a labor relations matter associated with people, perhaps a garage closing, or a planned lay-off, or some sort of an issue that was tied up with this attrition process.

Q. With whom would you discuss these matters? A. Primarily Ronald Touanen, who is here at this meeting. He would be the business agent that I dealt with, primarily.

Occasionally with Mr. Kelly, but pretty much with Mr. Touanen.

I would say it's accurate to say I would have weekly discussion on some labor relations issues with Mr. Touanen.

Q. How did the Maspeth repair work come into it? A. In the course of these discussion, it was clear to me that Local 447 was quite concerned about the loss of membership, and was becoming increasingly interested in retaining what they had.

Sometime, and I cannot be precise as to when the subject first came up, but it would have been in the course of a discussion we had about the other matters, it was not solely for the purpose of discussing Maspeth.

The question of the work being done at Maspeth was raised by Mr. Touanen, I would believe. Yes, Mr. Touanen.

Q. What did he say? A. In the context of we are losing members,
27 you are closing garages, we are looking to make sure that we get all the work that is due us, and you have people doing our work at Maspeth.

What do you mean. And in the course of the discussions, it became clear that he was concerned about both the nonmilk trucks serviced by 584 mechanics at Maspeth, as well as the trucks the entire fleet.

Q. The milk fleet? A. Right. I guess the basic contention that became clear in a series of discussions, was that the feeling was that 447's

jurisdiction covered all vehicles, all maintenance work done by Hertz employees done on vehicles. All maintenance work.

Again, this was not a single discussion where this came out. This would have been through a series of discussions in the normal ebb and flow of our labor relations intercourse on all matters.

So, I would say by late '72, early '73, I was very concerned, and aware of 447's concern about their continuing loss of membership, and the –

Q. How did the Maspeth situation come to a head? A. Okay. Late in – late in 1972, and early 1973, Hertz Corporation began to negotiate – negotiations with Hegeman-Holland to renew the lease agreement which was going to expire sometime in '73.

I became aware of these negotiations through normal business conferences, staff meetings, with our sales and management personnel.

This is a normal kind of a thing. We keep each other informed as to what is going on, because labor agreements are involved.

I would say sometime early in 1973, I was informed that the negotiations with Hegeman-Holland, the milk company, were proceeding along these lines, that one, they had laid down a stipulation, all right, condition of renewing the lease.

And the condition that the milk company laid down was this, if they renewed the lease with us, and agreed to pay us certain rates and receive new vehicles, et cetera, et cetera, and I am sure there were other things, one of the things we would have to do in return was to cease to maintain the non-milk trucks in the Hegeman-Holland garage.

Q. For approximately how long had that been going on, maintaining the nonmilk trucks in the Hegeman-Holland garage? A. I would say since the early 1960's. In excess of ten years.

Q. Go ahead. A. So, this stipulation was laid down. It became

29 quite clear if we were to renew the lease, one of the things we would have to do would be to cease to maintain the nonmilk trucks.

At that time I think the fleet size was about 44. It has since reduced itself to 35 or so.

That we would have to maintain them not in that garage. As this became clear to me, I realized in light of my continuing conversation with Mr. Touanen, and my awareness of 447's concern about the slipping membership, that this in fact could heighten the problem.

When it became clear, again I would say in the spring, late winter of '73, that it looked like we would be successful in renegotiating a lease agreement with Hegeman-Holland, I realized the problem was going to come to a head.

Although maybe either side of the union did not see it as such, I saw it for what it could be, and in fact the reason we are here today.

Q. Then what happened? A. Okay. My sense of there being an impending problem, I think, was heightened by a meeting that was held, I would say, I believe the date is May ninth.

Q. What year was that? A. May of 1973.

30 Q. Right. A. My sales manager, Mr. Paul Gold, informed me that in his discussions with Hegeman-Holland, he was told by Hegeman-Holland that the union was interested in the negotiations and wondered how things were proceeding.

Q. Which union was that? A. Local 594, excuse me. And a meeting was requested between the employer, Hegeman-Holland, and representatives of Local 584, to discuss the consequences of the lease renewal.

Q. What 584 employees did Hegeman-Holland employ? A. 584?

Q. Yes. A. These 17 to 19 mechanics employed at Maspeth facility.

Q. Employed by Hegeman-Holland? A. No. I am sorry, employed by Hertz Corporation.

Q. I wanted to make that clear in the record. A. Okay.

Q. Go ahead. A. The meeting was held, and it was quite clear, and did not surprise me, that the Local 584 expected that regardless of what happened, or where the nonmilk trucks were serviced, that those trucks were theirs, that they had been servicing them for a number of years, and intended
31 to continue doing so.

And that regardless of where they might be serviced out of. I understood they were going to be moved across the street.

Once again, this heightens my sense of concern about an impending problem, because Mr. Touanen on one side was showing interest in those vehicles, independent of what was going on there.

There came a time, and it had to be sometime after that meeting, or in and around that meeting, that I had a specific conversation with Mr. Touanen, and told him what was happening, and said in the interests, in good faith relationship with the union, said look, this is what is going to happen, we are going to be forced to move those trucks across the street.

584 is going to continue to claim the work. You have been pressing a claim with me over the past several months of wanting to service these trucks, feeling that they belong to 447, or the work does. We have a problem.

Q. The claim you referred to, Mr. Touanen's claim, was both milk and nonmilk. It was the entire fleet at that location? A. Yes.

I think that was the general – the gist of the general claim. And I would say, and I don't want to put words in his mouth, but I would say with the
32 emphasis upon the nonmilk trucks.

Certainly the nonmilk trucks, if not the whole damn – the whole thing.

Q. Go ahead. A. I would say the situation from May until a meeting

was held in November, I believe November 9th of 1973, from May until November I had a series of, not every day, but conversations with both unions.

I recall having a conversation with, I believe, Mr. Kelly, of Local 584, indicating that 447 was – had some concern about this, and it was made quite clear to me that there was no problem, the work belongs to 584, and, you know, there is no problem.

Q. You said Mr. Kelly of 584. Can you indicate what his first name is? A. John Kelly; I believe he is the President of 584.

Q. Barney Kelly is with 447? A. Correct.

I think rather than – during that period of time, I sought, through conversations, to see if there was anyone that this problem could be resolved, although there was nothing at my disposal to do it.

Essentially what was happening was that the claims on 447 continued, and if anything, I think the – they intensified, as they became fully aware
33 that these nonmilk trucks were going to be physically separated and moved.

Q. Is there any date when the nonmilk trucks were to be physically separated? A. Yes. Along about May or – May and June of 1973, we expected delivery of 54 brand new trucks, which would be the new trucks for the Hegeman fleet.

Q. Those are milk trucks? A. Right. That were supposed to be delivered in October.

Q. Of '73? A. In October of '73.

Q. Have they been delivered? A. They have not

Q. Not even as of today? A. At that time, with the trucks coming in October, and that was going to be the time when Hegeman-Holland would say okay, now the nonmilk trucks must go.

There was not very much time to get the thing resolved. What did

happen, in fact, fortunately, the manufacturer of the trucks began to notify us of creeping delays in delivery schedules and the next thing we knew, the trucks were supposed to be delivered in November, then it was December, and –

Q. What is the present anticipated date of delivery? A. We have received to date five or six new trucks that are in service. There are one or two others that are awaiting licenses, and will be put in service.

34

The bulk of the 54 trucks we do not expect to receive until June or July.

Q. The trucks that are in service, are in service at Maspeth? A. Correct. Milk trucks.

Q. When was, or was the Hegeman-Holland lease finally executed during 1973? A. Yes. It was signed sometime in June of 1973.

Q. Would you resume your narrative then, of the dispute? A. Well, I guess all I can say is I was aware that I had a problem, and I had no way to solve it. I did not expect – I had nothing to offer to 447.

My feeling was that, at this point I did seek Counsel from Hertz lawyers, to find out where we stood, because frankly, it was a dilemma beyond my ability to solve.

The advice I received from your predecessor, Mr. Obel, who is no longer with Hertz Corporation, and a representative of a law firm that was retained, was that the issue seemed to be a, somewhat hairy issue as to who is – whose trucks belong to who, or who could rightfully claim the work.

35

But the law – lawyers then employed said if Hertz Corporation had to choose, the work should go to 584.

Continue to be a part of 584's jurisdiction. Again, all that happened in these ensuing months was that the sense of being in a dilemma was heightened.

Q. Whose sense? A. My sense of being in a dilemma. What this led

up to was, I, sometime in October, talked to both unions and said I have a problem, I am in the middle, both you people want this work, let's get together, the three of us, and see if there is some way to resolve it, because I can't satisfy either.

Q. Who did you talk to? A. I spoke to Mr. Touanen and Mr. Kelly, I can't remember specific instances. I think the gist of it – from Local 447, and Mr. John Kelly, from Local 584; I may have had a conversation with Mr. Barone.

To the effect, of trying to schedule this tri-partite meeting, to discuss this issue, openly, and let each side see what the other side felt, and see if there was some way to resolve it.

What was becoming clear was that if we – if it – it became clear to me in the discussions prior to this meeting, that if we did not assign the work to 447 people, that is the nonmilk trucks, there would be picket lines erected,
36 we would be struck on that issue.

Q. How did that become clear to you? A. In conversations.

Q. Who said what? A. The conversations with Mr. Touanen.

Q. What was stated to you? A. All right. I can't recall specific words. I am referring to conversation that would have been part of these continuing day to day relationships.

Q. To the best of your recollection? A. To the best of my recollection, statements were made to the fact that if you put the nonmilk trucks across the street, and don't assign 447 people, we will shut you down.

Q. Okay, go ahead. A. Okay.

MR. EDELMAN: Can we get a period of time on this?

Q. This is prior to November? A. I would say these are conversations that would have been occuring in the September – in September, in and around that vicinity.

Q. Go ahead. A. The upshot was, again, there was no way that I could settle this by talking independently to either side.

I felt the only way to try and advance the thing was to call this meeting which was held November 9, 1973 –

37

Q. Where? A. At the Sheraton LaGuardia Motor Inn.

Q. Who was there? A. That meeting was attended by Barney Kelly from Local 447, Ronald Touanen from Local 447, John Kelly from Local 584, Joseph Barone, from Local 584, myself and Richard Metzger, who is the Hertz's Corporations's corporate director of labor relations.

I believe that is his title. So, there were six people present.

Q. Could you narrate what transpired at that meeting, please? A. Yes. I made, I guess, an opening statement. Said fellows, we are here because I see a problem. I am caught in the middle of a situation that I just don't see any way that I can solve to either side's or both sides' satisfacation.

If we – 584 wants to continue to work on these trucks and has made it clear they intend to, and if we try to take the trucks away, we will be struck for that purpose.

447 has said essentially the same kind of thing to me, if we do not assign the work, to them, we will suffer a stoppage to get a – to get them to

38

do what they want to do.

Q. You said 584 said the same thing to you? A. No. This my understanding of the situation. After I said that, both, then it became a three way discussion, although primarily the unions were stating their position, and claims to the work.

Both 584 and 447 –

Q. What did they state? A. Essentially reitereated what I just said, that they both felt they had a claim to the work. 584 had a continuous claim, always did, and had no intention of giving it up, and stated that if

Hertz Corporation tried to take it away, or if the work were given to 447, we would be struck.

447 again said the same thing, that that work –

MR. ENGLEHART: Can we find out who –

HEARING OFFICER: Who made these statements?

MR. ENGLEHART: Yes.

MR. OBEL: That is my next question.

MR. ENGLEHART: Identify who said what. A. I would say from – on Local 584, Mr. Joseph Barone made statements to that effect. Made those statements.

And on 447's side, Mr. Touanen made statements to that effect.

39 Q. Go ahead. A. It was also clear to me that both – both Kelly's, Messrs. John and Barney Kelly, were in accord with the statements that were being made by their representatives.

Q. How was that made clear to you? Did they disagree with you?

A. No.

Q. Okay. Go ahead. A. There was no resolution at this meeting. Neither side felt that there was any room to give or compromise, as I saw it, and the meeting ended basically in this fashion.

There was no agreement on the table. I recall Mr. Kelly, Mr. Barney Kelly from 447 saying, well, we will just have to see, we will have to look into some things, or some statement to that effect.

It was clear to me that there was no agreement. I didn't see any forthcoming. I left the meeting with the hope that somehow there might be some way, telephonic conversations, and something could be settled or worked out in some way.

But it was clearly not there, present at that meeting.

Q. What happened next? A. Approximately a week and a half, two

40 weeks later, I happened to have a conversation with Mr. Kelly.

Q. Which Kelly? A. Barney Kelly of Local 447, and it was on another matter. He may have called me on something, or I may have called him on something. I forget which.

I think he called me, but it was on a totally unrelated matter.

And I chose to ask him in that conversation, well, Barney, where do we stand, is there anything happening on this 584 thing.

And he said words to this effect, no, we will just have to see what is going to happen. And when the time comes.

Q. Right. What is next? Continue your narrative. A. At that point I believe I spoke with you, or within a few days and said we have been threatened with a strike, Mr. Obel, we have no recourse, I don't know what we can do, because no matter what happens, we are going to have a problem.

And we cannot resolve it, is there some other means. And that is when we discussed –

Q. Then what happened? A. You filed an unfair labor practice charge against both unions. I don't know what you would call the meeting,
41 but a meeting was held here in these offices at 16 Court, between you, myself and Mr. Edelman –

Q. Is that where your affidavit was taken? A. An affidavit was taken from me at that time.

Q. And now we are here today? A. Correct.

Q. Is that – does that complete your narrative? A. Yes.

Q. Is there anything you haven't said that you would like to say about the nature of the dispute? A. No.

Q. And the chronology of it? A. No.

MR. OBEL: I have no further questions.

HEARING OFFICER: Mr. Englehart, do you have any questions?

MR. OBEL: I do have one further question; I am sorry.

BY MR. OBEL

Q. Did there come a time prior to the filing of the charge, where you sent a letter to each of the unions, asking them once more to try and resolve it? A. David, I recall sending some sort of letter, and I cannot recall the substance of it. It was essentially yes, I guess a last ditch effort, an indicating to them that if there was no way to resolve it, we would take the
42 matter before the Board and file for a hearing.

Q. And thereafter the charge was filed? A. Right. There was no response from either union indicative to me that there was any change in anyone's position, and that I had no recourse but to try to get someone else to look at it and help us.

MR. OBEL: Okay.

HEARING OFFICER: Mr. Englehart.

CROSS EXAMINATION

BY MR. ENGLEHART

Q. Mr. Keehn, how long have you been employed by Hertz, totally?

A. Approximately two and a half years. Since December 1st, 1971.

Q. I show you this document and ask you if you can identify what it is.

HEARING OFFICER: Can we get it marked for identification, please?

MR. ENGLEHART: I thought he would just identify it.

HEARING OFFICER: Okay.

THE WITNESS: Yes. This is the current labor agreement between Hertz Corporation and Local 447, covering the machinists employed by Hertz.

MR. ENGLEHART: Can I have this marked as Local 447's Exhibit 1 for identification?

43 (Above-referred to agreement marked Local 447's Ex. 1 for identification.)

MR. OBEL: Have you submitted it?

MR. ENGLEHART: No.

MR. OBEL: I am sorry.

Q. Is this the agreement, if you know, by which Local 447 claims to represent the mechanics at the Maspeth facility? A. I believe so. It is the only existing agreement between Hertz and 447. I believe that – yes.

MR. ENGLEHART: I offer this exhibit as – I offer this exhibit in evidence at this time.

MR. SIMON: No objection.

MR. OBEL: No objection.

HEARING OFFICER: Local 447 Exhibit Number 1 is received into evidence.

(Agreement previously marked Local 447's Ex. 1 was received into evidence.)

Q. Mr. Keehn, at any time since the questions involved in this hearing came up, the questions of jurisdiction, work, has there been a strike? A. No.

Q. By either Local 447 or Local 584? A. No.

Q. By the way, in addition to the employees servicing the truck rental,
44 you also have Local 444 mechanics servicing the car rentals? A. 447? Did you mean to say 447?

Q. Yes. A. I believe so, yes.

Q. That would be about 150 additional employees? A. I honestly don't know the number.

Q. You testified that 70 to 80 percent of your business relating to trucks are leased to customers, as opposed to the type of customers – on a term basis, rather than on a daily basis; is that correct? A. This is correct. They are leased on a long-term basis, generally three to five years.

Q. Except for those employees who are currently working on the milk trucks that are involved in this hearing, who or what union represents those maintenance mechanics? A. Local 447.

Q. Isn't it a fact that during the course of your conversations with Local 447, and in particular with Mr. Barney Kelly, that all he asked was for you, Hertz, to maintain the agreement that Local 447 has had with Hertz and its predecessor, going back over 20 years ago? Fifteen years ago? A. I
45 would say that kind of a reference was included in the conversations, yes.

Q. Do you know who Metropolitan Distributors, Inc., is or was? A. I believe them to be the successor company to Hertz Corporations's truck division. I believe Hertz Corporation acquired Metropolitan distributors around 1955.

Q. The predecessor? A. Yes.

Q. Do you know, if you know, whether or not Local 447 was the collective bargaining representative for the maintenance mechanics employed by Metropolitan Distributors, Inc.? A. I am certain in my mind from what I have heard, that that is a fact, although I do not – I have never seen a contract. But I believe that is the case.

Q. That is what your research would indicate? A. Yes.

Q. Isn't it a fact – I will withdraw that. Do you know whether or not or approximately 1955 through approximately 1970, the quanset hut area, I think that is the triangular piece of property, was a facility used for maintaining trucks owned by – owned and leased by Hertz? A. I am sorry,
46 would you restate the question, Mr. Englehart?

Q. Yes.

MR. ENGLEHART: Can we have that read back?

(The last question was read back.)

MR. ENGLEHART: Owned or leased by Hertz. A. I would say yes, with this qualification. My understanding is that we began to lease that property around 1960. But essentially yes, it has been a facility for the use you stated.

Q. And do you know who – withdraw that. Do you know whether or not employees or maintenance employees, employed at that facility, were represented by a collective bargaining representative? A. I believe the employees at that facility were 584 employees, at the time we leased the property. Mr. Englehart, in the interest of accuracy, in terms of what I know, or feel essentially confident that I have factual information on, versus what I believe to be the case, based upon research and conversations, I am aware of this.

The approximately two years ago, two and a half years ago, which would have been the time I came with the company, a Local 447 body man was placed in a facility that I understood was a 584 facility, the purpose of which,
47 the body man, was to do repair work on vehicles, body repair, banking out fenders, and that that person was taken out after a short period of time, because there was some conflict, the idea of having a mixed shop, between the two unions, 584 and 447.

But – well –

Q. But what? A. That is the total of my direct knowledge of any – other than what I have stated.

Q. Are you familiar with the contracts between Local 584 and Hertz? A. Yes.

Q. Okay. A. Not in detail. It is a rather lengthy contract, but –

Q. I wouldn't ask you the detailed questions then. Is there a current agreement? A. Yes, there is.

Q. Do you know when that was executed? A. November 11, 1973.

It expires November 11, 1974.

Q. Are you familiar with the prior agreement? A. Yes. That was a three year agreement, prior to that.

Q. Are you familiar with – is that a two year agreement? A. I stand corrected, it was a two year agreement.

48 Q. Is that an agreement from November 11, 1971, to November 11, 1973? A. Yes.

MR. ENGLEHART: May I have a moment, please?

HEARING OFFICER: Yes. We will go off the record and take a brief break.

(Short recess taken.)

49 HEARING OFFICER: On the record.

MR. SIMON: I think by stipulation we are going to submit as Local 584 Exhibit 1 the Milk Industry Collective Bargaining Agreement covering the term November 11th, 1971, through November 11th, 1973.

There has been a one year agreement which succeeds that agreement, but which does not change any of the terms or conditions of employment, at least in so far as they effect this proceeding, except for an increase in wages.

I will supply the Board and counsel for all parties with a copy of that document.

HEARING OFFICER: Fine.

Do you so stipulate, Mr. Obel?

MR. OBEL: I do.

HEARING OFFICER: Do yo so stipulate, Mr. Englehart?

MR. ENGLEHART: I do.

HEARING OFFICER: You so stipulate, Mr. Simon?

MR. SIMON: I do.

HEARING OFFICER: The stipulation is received.

(The above-referred to document was marked Local 584's Exhibit 1 and was received in evidence.)

MR. SIMON: May we stipulate, at this time I think it would be appropriate, Mr. Keehn mis-spoke himself when he spoke of the -- the bargaining representative for Hertz.

He described it --

HEARING OFFICER: Do you want to go off the record?

MR. SIMON: Yes.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

Mr. Englehart, do you wish to --

MR. SIMON: Why don't I?

May I propose as a stipulation that when Mr. Keehn referred earlier in his testimony to the fact that Hertz had authorized the Dairymen's League to represent Hertz in collective bargaining with Local 584 that he intended to state that Hertz authorized a multi-employer association, which bargains with Local 584, to act as the Hertz representative in those negotiations, and that it was not an association by the name of Dairymen's League, which in fact is the name of a specific milk company.

HEARING OFFICER: Is that correct, Mr. Obel?

MR. OBEL: To the best of my knowledge, it is.

THE WITNESS: Yes, I would agree with that.

BY MR. ENGLEHART

Q. By the way, Mr. Keehn, have there been any layoffs in the Long Island City District of Maintenance Mechanics, represented by Local 447?

A. Yes. There was one many layed off -- yes, it would have been the Long Island City District.

Q. Okay. A. This would have been about a year, a year and a half ago. Something like that. Approximately a year.

That man, I might say, was subsequently offered re-employment at our Bronx facility, and refused the work, did not report to work.

But he was layed off for a short, one or two day period.

Q. But he was layed off? A. Yes.

Q. He was offered work only after Mr. Touanen intervened? A. I –

Q. Do you recall that? A. He would have been offered work had not Mr. Touanen intervened, any way, because he had rights to the next opening.

Q. But Mr. Touanen intervened? A. Yes. I did have a conversation with Mr. Touanen about that.

Q. But he was layed off out of Long Island City regionally? A. Yes,
52 I believe that was the District.

Q. By the way, the negotiations that you had with Hegeman, back in 19– I believe late '72 or early '73, Local 447 was not a part of that negotiations, were they? A. I do not believe so. I wasn't there, either.

MR. OBEL: You are referring to the renewal of the lease?

MR. ENGLEHART: That is correct.

A. I am sorry, yes. I can say definitely they were not part of the negotiations for the renewal of the lease with Hegeman-Holland.

I misunderstood you, Mr. Englehart.

Q. Let me refer you to the meetings that you had with Local 447 and with Local 584.

You said there was a meeting on November 9th? A. Yes. 1973.

Q. You said that you were the one who opened up the meeting? A. Yes.

Q. Now, when for the first time did anybody, including yourself,

mention anything connected with a strike or a shut down?

MR. OBEL: You mean at that meeting?

53 MR. ENGLEHART: At that meeting.

MR. OBEL: Right.

A. The meeting lasted, I would estimate, a half an hour, 40 minutes, and the best I can recall is that somewhere around midway, or toward the latter part of the meeting, when it became clear that each union was not conceding an inch, that that is when that – those statements were made.

Somewhat toward the end of the meeting.

Q. Who made those statement? A. Mr. Barone made them for 584.

Q. What did he say?

What did Mr. Barone say, first?

What did he say? A. My recollection was that the – and I can not pretend that this is a verbatim recall, but the unmistakable, clear, gist of it was that, more than the gist of it, the unmistakably clear intention was that if we did not assign 584 employees to those non-milk trucks across the street, we would be shut down.

There would be pickets.

Q. That is what he said? A. Yes.

Q. What did Mr. Touanen say? A. Once again, there were a lot of words spoken, and the discussion was not without a certain amount of heat,

54 and interruptions and overtalking and so forth.

I would have to say the clear, expression, and unmistabeable intent and the words were, that if we did not – if we assigned that work to 584, across the street, that we would be struck at that location, and possibly others.

Q. This is November 9, is that correct? A. Yes.

Q. Isn't it a fact, Mr. Keehn, that neither Mr. Barone nor Mr. Touanen made those remarks, but you assumed that if the matter wasn't resolved, there

may be a strike by either party? A. No, sir.

Q. Okay. A. My clear understanding then, and now, is that if we do one or the other, that the strike will be the result, from either side.

I have had no indication from either side, that there is a change in that position.

Q. That was November ninth? A. Yes.

Q. And there was no change between that time and the time that the – that the petition herein was filed; is that correct?

55 MR. OBEL: Petition?

Q. Excuse me, the unfair labor practice charge was filed; is that correct? A. Yes. Nothing that has been communicated to me. I would like to hear something, if there has been.

Q. That was some time in January; isn't that correct, more than two months later? A. The petition, yes. That is correct.

MR. OBEL: Not the petition, the charge.

A. The charge was filed in January, yes.

Q. Nothing intervened between November 9, and the time when the charge was filed, to change your mind that a strike was going to ensue upon the assignment of the work from one group or to the other group? A. No.

Q. And in fact, all this time the work has been assigned to Local 584? A. Correct.

Q. And Local 447 has not struck, has it? A. No.

Q. Did it put any kind of pickets –

MR. OBEL: Excuse me, can we go off the record for one minute?

HEARING OFFICER: Off the record.

(Discussion off the record.)

56 HEARING OFFICER: On the record.

We will take a five minute recess.

(Short recess taken.)

HEARING OFFICER: The hearing will be back in order. Please remember that you are still under oath. Mr. Englehart.

MR. ENGLEHART: I want the – may I have the last question read, please?

(A portion of the record was read back.)

MR. ENGLEHART: Before you answer the question about the pickets, I want the witness to know that I am referring only now to the time span between the November 9, 1973 meeting, and the time that the charge was filed.

THE WITNESS: Yes.

Q. Is that understood? A. Yes.

Q. Okay.

Do you know whether or not during this period of time, either Local 584 or Local 447 set up picket signs around your plant or any of your plants? A. The did – neither union did.

Q. In fact, at the time when, of the November meeting, to your knowledge, wasn't there pending an arbitration proceeding referring to this very issue, between Local 447 and Hertz? A. There was – that is correct.

57 Q. And the reason that the matter did not proceed, was it was the hope that the parties could resolve it without the necessity of going to arbitration? A. That was not my understanding, nor my intention of having the meeting.

Q. I am not talking about the meeting now. I am talking about the arbitration – yes, the meetings. A. Yes.

Q. To help resolve the issue. Isn't that correct, between the parties? A. The purpose of the meeting was to help resolve the issue. But it was not in my mind and I did not call the meeting between the parties for the

purpose of avoiding the arbitration for itself.

My personal feeling was that the arbitration was in fact a ploy on the part of 447, and was essentially irrelevant to the issue, because it didn't bind or join in any way 584.

Therefore, my reason, I felt that that really didn't enter into it, even though it was a fact, and it was in fact, and I suppose even now, is still in abeyance.

Q. You say it was a ploy? Do you know when the arbitration, notice of intention to arbitrate, was sent to Hertz? A. It was.

58 Q. Do you know when? A. Sometime in May, I believe. I recall seeing correspondence in my file, going back at least as far as May.

Is strategy a better word?

Q. Did you believe that the union was not acting in good faith, in starting an aribtration proceeding? A. No, I did not believe they were — I believed then and believe now, that both unions are and have acted in good faith.

Q. In fact, they just followed the provisions that are set forth in the collective bargaining agreement, between you and it, Local 447? A. Yes.

Q. Isn't that correct? A. Yes.

Q. Do you know of any agreement, written agreement, between Local 447 and Hertz, which excludes coverage of employees at Maspeth, from coverage under the collective bargaining agreement which is union — which is Local 447's Exhibit 1? A. To my knowledge, there is no written agreement to that effect.

Q. As a matter of fact, even prior to the November 9th meeting, wasn't

59 there an attempt to have another tri-partite meeting? A. Excuse me, did you say prior to?

Q. Prior to November ninth. Wasn't there an attempt — A. That is correct.

Q. Was – was the meeting set up? A. I scheduled the meeting between the parties.

Q. Who was present? A. Hertz Corporation representatives and 447, Local 584 got their signals crossed and didn't realize the meeting was scheduled that day.

Q. Is that what they told you? A. Yes.

Q. When was that? A. It had to be sometime in October, early October, I would guess. Yes, about that time. I subsequently attempted to re-schedule the meeting and successful in scheduling the meeting we had on the ninth of November.

Q. You testified earlier that you were aware that the unit represented by 447 was slinging. I think you used that word.

And that the problem could reach higher proportions. What was the problem? A. Well, the problem interpreting was 447's concern was, through Mr. Touanen was, was that the membership, size of the membership
60 was shrinking substantially. I would think that is a natural concern of any bargaining unit, that they gain or at least maintain membership, rather than lose.

Q. Wasn't it also their concern, or didn't Mr. Touanen inform you earlier, earlier than May of 1973, that employees of Hertz were performing work, employees of Hertz represented by Local 584, were performing 447 work? A. Yes.

Q. Wasn't the complaint that these employees, the 584 employees, were working on trucks that were not trucks used in the milk industry? A. That was part of the discussions that I referred to in my earlier testimony, yes.

Q. And that further that their complaint was road calls on trucks were

to be made by 447 people, and not 584 people? A. That was also a portion of these continuing discussions, yes.

Q. Didn't you indicate to him you would go out and check and see what the story was? A. I indicated that I was on the – yes. Essentially, yes.

Q. Because when he first presented you with the problem, you weren't
61 aware of it, were you? A. No.

Q. As a matter of fact, you weren't aware of the prior history, were you, at that time? A. Whatever that time is, I became educated as I went along, in these discussions with Touanen, Mr. Touanen.

Q. When for the first time did he bring this to your attention, he or Mr. Kelly? A. Bring which?

Q. The question of nonbargaining unit employees, non 447 employees, performing this work? A. Okay. As I testified earlier in response to Mr. Obel's questions, I believe it would have been somewhere in late '72 that this may have come up for the first time, as a consequence of our daily, weekly, intercourse on numerous labor matters.

Q. Do you know how it came up, precisely? A. I really can't recall a specific meeting, a specific conversation.

Q. But Mr. Touanen brought it to your attention, or was it Mr. Kelly, or someone else from Local 447? A. Mr. Touanen brought it to my attention.

Q. What did he say to you, to the best of my recollection? A. I can only paraphrase the thought, the substance of the thought. I can't talk about specific words or attempt to recall it verbatim.

62 The gist of what he said, and this is what I had stated earlier, was that 584 was doing our work, working on nonmilk trucks at the barn.

And they were even performing road calls on nonmilk trucks.

Those kinds of things were said, in about that way. I replied at one point, again in some of these conversations, one of the things I replied with was, yes, that is true, but 447 mechanics perform road calls on milk trucks also, because the milk trucks run throughout the city, and I didn't think, in my mind, that that was a significant problem or something that – well, significant problem.

Excuse me, the significant problem, the problem that I felt was not significant, was the matter of road calls, not the other matter.

Q. Sir, I am sorry – A. I just want to clarify. I said I didn't think it was a significant problem. I want to be sure to clarify it. I didn't think the matter of 584 and 447 performing road calls, emergency road calls on each other's trucks, was a significant problem.

I do feel and did then, that the issue of who does the maintenance work at the facilities, is a significant problem.

63 That is why we are here. I just wanted to clarify that.

Q. That is partly why we are here.

MR. OBEL: Let's not argue. That is why we are here.

MR. ENGLEHART: No further questions at this time.

HEARING OFFICER: Mr. Simon.

CROSS EXAMINATION

BY MR. SIMON

Q. I just want to tie down one piece of your testimony relating to the size of the nonmilk truck fleet being serviced by 584 represented employees, at the Hegeman complex, during the spring of 1973.

Do I recall that you testified that at that time the nonmilk fleet was approximately 44 trucks? A. Yes.

Q. Do I further recall your testimony that nonmilk trucks had been maintained and serviced by 584 employees, at the Maspeth complex, for

approximately ten years? A. Yes.

Q. Prior to the meeting you have described on November 9, 1973, had you had discussions with either Mr. Barone or Mr. John Kelly, of Local 584, in which you said to them that Hertz would continue to assign the work of maintaining and servicing the trucks at Maspeth, regardless of whether it was across the street, or within the Maspeth garage, to employees represented by
64 Local 584? A. The only conversation I can recall where that – where those issues were discussed, in that way, and that directly and specifically was at the meeting of May 9, '73, in Hegeman – at Hegeman-Holland's office.

Because that was, as I understand it, the reason the meeting was called. I understood the meeting to be called by 584, out of concern for this issue.

Q. At that meeting, would you tell us what it was that you told the Local 584 representatives? I am referring now to the meeting of May 9, 1973? A. We agreed – we meaning the three parties, Mr. Holland, who was there, one of the Holland brothers, and the union representatives, myself and Mr. Gold from the company, that it looked like the lease was going to be renewed, that we understood that Mr. Holland was demanding and insisting that we remove the nonmilk trucks from his – not service them in the Hegeman-Holland complex garage, that we were going to move them across the street, and we would continue to maintain them with 584 employees.

We also discussed at that time the need for an economic operation and the necessity to get involved in the lay-off, at a future date, when the new trucks were received, and the fleet was more efficient.

That was part of the conversation. During that conversation, I did indi-
65 cate that there was some concern on my part that 447 was in fact looking for that work, and that there could be a problem.

But that did not – that was mentioned, merely mentioned on my part.

Q. But it would not affect your determination to continue to assign that work to Local 584 employees? A. I –

Q. That is what you communicated to Local 584? A. That is correct, okay. It is not to say I was complacent or placid about what that would mean, or what it could lead to.

* * * * *

66 REDIRECT EXAMINATION

BY MR. OBEL

Q. In your direct testimony, Mr. Keehn, you referred to a written communication which you had made to both Local 584 and Local 447, between the November ninth meeting and the filing of the charges, which you testified was not responded to by either side. Do you recall that? A. Yes.

Q. I show you what I will ask to be identified as Company's Exhibit 1, a xerox of a letter dated January 9, 1974, from you to Messrs. Barney Kelly and John Kelly, of 447 and 584, respectively, and ask you whether you can identify that as the written communication you testified to on your direct testimony?

(Above-referred to letter marked Company's Ex. 1 for identification.)

Q. Is that the document you sent? A. Yes.

Q. CAn you identify for us who the bcc's are on the top? That is evidently a blind carbon notation. A. Blind carbon copies to E. J. Brody, region vice-president, Hertz Corporation.

Q. Turck division? A. Truck division. Richard Metzger, corporate director, labor relations, Hertz. David Obel, yourself.

67 Q. Name misspelled? A. With two "L"s?

Q. Yes. A. Larry O'Connor, truck division, labor relations manager, Hertz. Jim Strupp, truck division, personnel director. These are all Hertz employees.

Q. And Mr. O'Connor reports to Mr. Strupp? A. That is correct.

Q. Does the date of the meeting in that letter refresh your recollection as to when the meeting was held? A. Yes. The letter is dated January ninth. After our November meeting, and before the figure of the unfair labor practice charges, which I believe were dated the 14th of January.

Q. I believe – A. In this letter I state my intention that unless –

Q. No. Let me draw to your attention, you refer to the meeting of November 7th, rather than November 9th. Does that refresh your recollection as to when the November meeting we have talked about, was held? A. Well, I would have to say I would go with November 7th, since I put it in writing, and I hope to God I check my correspondence.

I refer to the one and only meeting that occurred on or about November 7th, at the Sheraton LaGuardia Inn, at which the parties were present.

68 Q. I note the letter was sent registered mail, return requested. That is the three "R"s? A. Yes.

Q. Did you get the return back? A. Yes.

Q. You received no communication whatsoever with respect to this letter, thereafter, did you? A. No, I did not.

Q. From either Local 584 or Local 447? A. No.

Q. As I believe you stated, shortly thereafter charges were filed by Hertz? A. Correct.

MR. OBEL: I offer this document in evidence. Let me show it to both Counsel, after you read it, please.

HEARING OFFICER: Yes.

MR. SIMON: It should be before she reads it, but that is all right.

MR. OBEL: I offer it in evidence.

HEARING OFFICER: Is there any objection to Company Exhibit 1?

Hearing no objection, the exhibit is received.

(Letter previously marked Company'x Ex. 1 was received into evidence.)

69 Q. As I recall your testimony, I think on cross, you stated that Local 447 filed a claim for arbitration of the Maspeth disputes, sometime in May, 1973; is that correct? A. May have been prior. I recall seeing a piece of correspondence from – yes. Approximately.

Q. Do you know whether the parties ever agreed upon an arbitrator to hear the case? A. I don't believe we did.

Q. Do you know – obviously, then, a date was not agreed upon to hear the case; is that correct? A. Correct.

MR. OBEL: No further questions.

HEARING OFFICER: Mr. Englehart, do you have any further questions?

MR. ENGLEHART: No further questions.

HEARING OFFICER: Mr. Simon?

MR. SIMON: No.

HEARING OFFICER: I have one question. Could you tell me again what is now being done at the property leased from Levitz?

THE WITNESS: Well –

MR. OBEL: You mean at this present date?

HEARING OFFICER: At this point in time.

THE WITNESS: There are milk trucks that will be stored there.

70 There may be occasions for nonmilk trucks. Again, the total fleet that is presently being serviced out of the facility across the street, on occasion will be stored there.

If they are waiting for repairs, which will usually be performed in the garage, they might be placed in that lot.

There are a large number of old milk trucks which we are going to sell, and get rid of, once the new milk trucks are received from the manufacturer,

whenever that is.

We are in – well –

HEARING OFFICER: Are major maintenance repairs made there now?

THE WITNESS: No. I would say at this point major maintenance repairs are not being done. They are in the nature of running repairs.

By that I mean something that can be fixed very quickly, without taking the truck into a shop requiring special equipment, special lighting, or such as replacing a mirror or broken window or changing a tire.

Something of that order. Or starting the truck, if it's cold.

HEARING OFFICER: Okay. Does anyone have any further questions?

MR. OBEL: Just one.

FURTHER REDIRECT EXAMINATION

BY MR. OBEL

Q. Could you tell us, Mr. Keehn, as of today's date, approximately what is the size of the total fleet at the Hegeman-Holland complex? A. I –

Q. Total. A. Including the nonmilk trucks –

Q. Total, right. A. Two hundred.

Q. And nonmilk is how many of the two hundred? A. Approximately – well, approximately now I believe it's about 35. Today. And approximately 160 milk trucks. That is my understanding of the approximate size.

Q. Has the present ratio always been the case at the Hegeman-Holland complex? A. More or less. There were more nonmilk trucks, as I stated earlier, six months ago. There were close to 44. We have lost some accounts out of there, an account, at this point.

Q. Has the size of the milk fleet remained relatively constant over all of these years? A. I understand that many years ago the milk fleet was larger than it currently is now. It was larger than 160, but I could not tell you how

72 large it was at its largest point.

MR. OBEL: No further questions.

HEARING OFFICER: Could you tell me where the nonmilk trucks that were previously serviced at Holland, are being serviced now?

THE WITNESS: In the same place. We have not been asked to move them yet, because we haven't received delivery on the new milk trucks.

HEARING OFFICER: I see. Thank you. Anyone have any further questions?

MR. SIMON: I have one. I don't know if this witness has the knowledge, but let's try.

RECROSS-EXAMINATION

BY MR. SIMON

Q. Do you know or does your research disclose, whether or not within the time period that Hertz has been providing the trucks to Hegeman-Holland, the lot across the street has been used for major repairs on either the Hertz milk trucks or the Hertz nonmilk trucks? A. I cannot say for a fact. I believe major repairs may have been performed at one time. That was the purpose of the quanset hut.

It was not merely a shelter.

Q. Do you know by whom those repairs were performed? A. I

73 believe 584.

MR. SIMON: No further questions.

HEARING OFFICER: Mr. Englehart?

RECROSS-EXAMINATION

BY MR. ENGLEHART

Q. Mr. Keehn, do you know whether or not, I am talking about presently, during the period of time in question, 1972, '73, up to the present, if a truck, a Hertz rental truck, a nonmilk truck, from let's say another district – A. Yes.

Q. — happens to be in your — in District, I think it's 9 A. No. The Long Island City district, which includes Maspeth location, among others, yes.

Q. Will a 584 mechanic go out and make a road call to repair one of those trucks? A. I would say if the truck broke down in the vicinity of the Maspeth garage, that might happen, yes.

Q. It does happen, as a matter of fact, doesn't it? A. I would say it does happen. How frequently, I could not say.

MR. ENGLEHART: No further questions.

HEARING OFFICER: Does anyone have any further questions?

MR. OBEL: I don't.

74 HEARING OFFICER: You are excused; thank you.

(Witness excused.)

MR. OBEL: I have no further witnesses.

HEARING OFFICER: Mr. Englehart, do you have any witnesses?

MR. ENGLEHART: Yes, I do.

I call Mr. Bernard Kelly.

HEARING OFFICER: Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

Whereupon,

BERNARD KELLY,

a witness, called on behalf of Local 447, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENGLEHART:

Q. Mr. Kelly, you are sometimes referred to as Barney Kelly? A. That is right.

Q. By whom are you employed? A. District Number 15 of the International Association of Machinists.

HEARING OFFICER: Could you give your name and address for the record?

THE WITNESS: Bernard Kelly, 7 East 15th Street, New York City.

75 Q. And for how long have you been employed by District 15? A. Well, indirectly, 27 years.

Q. Can you tell us the relationship of Local 447 and District 15? A. Well, we are, Local 447 is a local lodge that is a member of District 15.

Q. Have you been associated with Local 447? A. Yes, since 1944.

Q. In what capacity? A. Started as a vice-president, and an organizer, in 1974, and a business agent I think, sometime in the fifties.

Q. In the course of performing your duties either for Local 447 or District 15, have you had the occasion to service the Hertz truck rental contracts? A. Yes.

Q. When did you for the first time service the Hertz truck rental contract? A. I believe in 1956.

Q. Are you familiar with the Long Island City district of Hertz Truck Rental? A. Yes.

Q. Can you tell us whether or not, to your knowledge, who represented the truck mechanics employed by Hertz in this Long Island City district?

76 A. 447, district number 15.

Q. Do you know, did you ever hear of a company known as Metropolitan Distributors, Inc.? A. Yes, sir.

Q. Can you tell us what that company is or was? A. I believe that was a truck renting company, and a leasing company, and it was the prior company before it became Hertz Corporation.

Q. Do you know whether or not Metropolitan Distributors, Inc., had

a collective bargaining agreement with a local union, with respect to its maintenance mechanics? A. Yes.

Q. What union was that? A. 447.

Q. Are you familiar with the history of Local 447 and Hertz, or Metropolitan Distributors, with regard to trucks leased to one or more milk companies, milk distributing companies? A. So I do.

Q. Tell us what you know, by giving the names, dates, to the best of your recollection? A. All I can do is quote, because the job that I took over from business agent Hollister, who handled the Hertz Corporation before I did, and also Metropolitan Distributors.

77 He mentioned to me at that time that as far as, I think it was Holland they called it or something, milk company, that they had an agreement with 584, the only reason they had an agreement 584, if they didn't make the agreement –

MR. SIMON: I am sorry, I hate to interrupt the witness, but since this is quite obviously an improperly hearsay, I think it would be appropriate to enter an objection at this time, and ask you to disregard testimony along these lines, relating to statements as to agreements which are said to have existed related to this witness by another district 15 representative, without any corroboration or record or without any ability to cross-examine the witness.

HEARING OFFICER: Who is it you are saying told you about this?

THE WITNESS: The business agent that handled it, the contract, prior to me. If we want to, we will get a witness down here to testify to what I say.

Q. Do you know where Mr. Hollister is now? A. Six feet under.

HEARING OFFICER: The objection is overruled.

MR. SIMON: I am sorry?

HEARING OFFICER: The objection is overruled.

78 MR. SIMON: May I ask the basis?

HEARING OFFICER: We will take his testimony for what it is worth.

MR. SIMON: We are not taking it for truth of the allegation that there was an agreement.

HEARING OFFICER: No.

THE WITNESS: I am sure I am telling the truth.

MR. SIMON: I am sure you are, Mr. Kelly.

Q. Brother Hollister told me for Hertz Corporation to get in contract with this milk company, that he had to agree with, I think it was Mr. Wanamaker, or Mr. Phil Marsh, that he would allow 584 to maintain the milk fleet only, and that they would be cutting down on the manpower as these people went out on pension, because that was the only reason that 584 wanted to keep the mechanics there, because they were within the pension plan.

So, that was the score. Ever since then, we have lived up to that agreement, and I even stated to Joe, and Mr. – Mr. Kelly, at that last meeting in November, as far as we are concerned, we are willing to live up to the agreement as was back in the late fifties or early sixties, and continue on, just keep the guys off our trucks.

Stay with your milk; that is yours. The others is ours. That is the way it is.

79 Q. When did you become aware that 584 people were performing maintenance mechanic work on nonmilk trucks, or making road calls? A. Well, when they started to lay people off, and we started to drop people. Monte, who I assigned to cover that contract, he told me about it, and that is when I was aware about it.

Q. I show you this document and ask you if you can tell us what it is?

HEARING OFFICER: Would you have that marked for identification, please?

Q. Can you tell us what that is, without telling us the contents of it? A. This is a document between Hollister and Greenbaum, stating where –

Q. Who is Greenbaum? A. Mr. Leon Greenbaum was the president of Metropolitan Distributors.

Q. This is a letter or an agreement? A. Yes, this is a letter agreement.

Q. What is it dated? A. July 29, 1947.

MR. ENGLEHART: Can I have it marked as Local 447 Exhibit Number 2, for identification, please?

80 (Above-referred to letter agreement marked Local 447's Ex. 2 for identification.)

Q. Can you tell us, Mr. Kelly, where you found this, or how this came into your possession? A. I must have found it in Artie Hollister's files, his old files, I guess.

Q. Were those files kept in the ordinary course of Local 447's business? A. Oh, yes. Yes. They go back fifty years.

MR. ENGLEHART: I offer this document in evidence.

MR. SIMON: No objection.

MR. ENGLEHART: Off the record.

(Discussion off the record.)

HEARING OFFICER: Back on the record.

Is there any objection to the receipt of Local 447's Exhibit Number 2 into evidence?

MR. OBEL: No objection.

HEARING OFFICER: Hearing no objection, Exhibit 2 is received.

(Letter agreement previously marked Local 447's Ex. 2 was received into evidence.)

Q. In 1973, Mr. Kelly, did you have any meetings with representatives of Hertz relating to the question of assignment of work involving nonmilk trucks being repaired by employees out of the Maspeth facility? A. Oh,
81 sure. Many times.

Q. Okay. Now, during the course of your discussions, were there any references made by anyone relating to strikes, lock-outs, pickets? A. No. Not that I remember.

Q. Was Local 584 represented at any of these meetings? A. There was one meeting we were together, back in November.

Q. Right. A. You mean the dates, I don't know if it's the seventh or the ninth. But I didn't recall anybody making a statement about strikes and so forth and so on.

Q. Did Mr. Keehn make any reference to a strike or lock-out? A. Mr. Keehn mentioned, if I remember right, that if I don't agree with him, he will strike me.

If I don't agree with him, they will strike me, something to that effect. But I think it was just in jest conversation that they were talking.

Q. But it was Mr. Keehn who mentioned that? A. I believe so.

Q. Did Mr. Kelly say anything about striking? A. John and I were doing a lot of talking separately, but I didn't hear anybody either from 584 or 447 make any statement to that effect.

82 MR. ENGLEHART: No further questions.

MR. OBEL: Whose chance is it?

HEARING OFFICER: Mr. Obel.

MR. OBEL: I have a could of questions.

HEARING OFFICER: Mr. Simon?

MR. OBEL: I have a couple.

HEARING OFFICER: Sorry.

CROSS-EXAMINATION

BY MR. OBEL

Q. Mr. Kelly, do I understand your direct testimony to be that you do not recall any statements at meetings in 1973, as to strikes or picketting? Is that accurate? A. What are you referring to?

Q. Your testimony. A. You mean in 1973?

Q. That's right. A. I don't recall.

Q. You don't recall any? A. No, anything.

Q. There could have been some that you are not remembering? A. I don't know, people talk, you know. I don't know what they talk about.

Q. You didn't hear everything? A. I didn't hear anything about it.

83 Q. You just don't recall it? A. No.

Q. Okay.

MR. OBEL: Can the witness be shown Company Exhibit 1, please.

Q. Have you ever seen that document before? A. Yes.

Q. It is addressed to you; isn't it? A. That is right.

Q. You received it? A. Right.

Q. You read it? A. Yes.

Q. You didn't respond to it, did you? A. I didn't pay any attention to it, to be honest with you.

MR. OBEL: No further questions.

HEARING OFFICER: Mr. Simon?

MR. SIMON: Can I have a moment, please?

Off the record.

HEARING OFFICER: Off the record.

(Discussion off the record)

HEARING OFFICER: On the record.

MR. SIMON: I have no questions.

84 HEARING OFFICER: No questions.

You are excused.

(Witness excused.)

HEARING OFFICER: Mr. Englehart, do you have other witnesses?

MR. ENGLEHART: Mr. Touanen.

HEARING OFFICER: Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

Whereupon,

RONALD TOUANEN

a witness, called by and on behalf of Local 447, having been duly sworn, testified as follows:

DIRECT-EXAMINATION

BY MR. ENGLEHART

Q. Mr. Touanen, give your full name and address to the reporter, please. A. Ronny Touanen, T-o-u-a-n-e-n, 7 East 15th Street, New York City. 10003. Business representative, Local 447.

Q. Mr. Touanen, by whom are you employed? A. By Local 447, International Association of Machinists, District 15.

Q. How long have you been employed by District 15? A. Oh, since on or about 197 – '69. '68.

Q. What is your job? A. Business representative.

85 Q. Will you tell us, in your capacity as a business representative, do you service the contract at – any of the Hertz Truck Rental contracts? A. Yes, I do.

Q. Can you tell us which contracts you service? A. Right presently now I am servicing all of Brooklyn, Manhattan and Long Island City area.

Q. Could you tell us, to your knowledge, what the jurisdiction of,

geographical jurisdiction, of District 15 is? A. In regards to Local 447?

Q. No. Just District 15. A. Greater New York area, metropolitan area, and Jersey, Connecticut.

Q. What is the jurisdiction of Local 447? A. It would be the same.

Q. Are you aware of any agreement between – I withdraw that question. Are you familiar with the current collective bargaining agreement between Local 447 and Hertz Truck Rental? A. Yes, I am.

Q. Do you know of any other agreement, other than union, Local 447's Exhibit 1, that is the collective, current collective bargaining agreement, do you know of any other agreement which would exclude – agreement, excuse me,
86 in writing – which would exclude any of the work which is set forth in your current agreement? A. No, I do not.

Q. When for the first time did you become aware that Local 584 members employed by Hertz, were performing work which you claim to be Local 447 work? A. On or just after I was assigned to service the Hertz Corporation garages.

Q. When did you first – when were you first assigned to the Hertz Corporation garages? A. Officially, I would say in 1971, '72

Q. Tell us what you did when you found out about this work being performed by Local 584 people? A. I then let Mr. Kelly, the business manager, I made him knowledgeable, aware of the fact that this was going on.

Q. Mr. who? A. Mr. Kelly, Bernard Kelly.

Q. Then what did you do? What were you instructed to do? A. I proceeded to, by telephone, to speak to the company in regards to this matter. To see if we couldn't get it clarified.

Q. Did you speak to anybody? A. Yes. I had several conversations. I had also several meetings with Mr. Dick Metzger and Mr. Roger Keehn, in

87 regards to this matter.

Q. Who is Dick Metzger? A. I believe him to be the attorney at the time for –

MR. OBEL: Let's stipulate.

MR. ENGLEHART: Okay.

Q. What did Mr. Metzger tell you and what did Mr. Keehn tell you? A. At which meetings?

Q. Well, when you first brought it to their attention. A. I believe that Mr. Metzger's statement at that time was that this was our work, in regards to the nonmilk trucks, over in the Maspeth areas.

This was his understanding as to who should do the work in regards to the Maspeth area.

Q. Did you make any claim for the milk truck work in the Maspeth area? A. No.

Q. Tell us precisely what your claim was to Mr. Metzger and Mr. Keehn? A. Any other trucks, the milk equipment, in and around the Maspeth area, was our work.

MR. SIMON: Could that question and answer by reread?

HEARING OFFICER: Yes.

(Last answer read back.)

88 Q. What did they tell you after you informed them of your claim? A. That they would check into it.

Q. Was this both men, or at the same meeting or different meetings? A. Yes, I believe Roger Keehn was present at this meeting, too. It wasn't the intent to hold a meeting for this purpose.

It was on something other than this, but this was brought up, also.

Q. And did they give you an answer? A. Not at that time, no.

Q. What did they say, at that time? A. That they would check into it.

Q. Did they come back to you, after checking? A. No, they did not.

Q. Then what did you next do? A. I proceeded to speak to Mr. Keehn, again, in regards to this. Several times after that.

Q. What did Mr. Keehn respond, if anything? A. That he would get into it.

Q. Did he call you back and give you an answer? A. No, he did not.

Q. What other steps did you then take? A. Again, I proceeded to
89 speak to Mr. Keehn, and he informed me that the milk companies were either going out of business, or that – he didn't know what was happening to the milk companies, and that the work in Maspeth area, he had no knowledge of anybody doing it over there, in regards to the nonmilk trucks.

Q. What did you say to him? A. I said he better check a little deeper then.

Q. Did he ever get back to you on that? A. No. He didn't. I believe we had meetings on other occasions dealing with other problems, and this always came up at every meeting that we did. It was like one long discussion.

Q. What further steps did you take? A. Well, then it came about that Mr. Keehn informed me that there was either going to be a new contract in the milk companies, or they were going to give the shop up, or whatever it was.

And I advised him – he advised me, rather, that milk companies advised him that they wouldn't allow any other than milk equipment on the premises on Maspeth there, where the milk trucks are repaired.

I then told him that we would have jurisdiction on any other shops, or anything else in that area, that our people have to work in any other area, in Maspeth area.

90 Q. What was his response to that? A. He will check into it.

Q. Did he get back to you? A. No, he didn't.

Q. Did you take any further steps in connection with this problem? A. Yes, I did.

Q. What was that? A. I proceeded to start an arbitration case in regards to this matter.

Q. Is that arbitration still pending? A. Yes, it is.

Q. Proceeding still pending? A. Yes, it is.

Q. Did you have any conversations – withdraw that. Were you present at a meeting on November 7th or November 9th, 1973, with representatives of Hertz and of Local 584? A. Yes, I was.

Q. Who was present at that meeting? A. I believe Mr. Kelly, myself, Mr. Barone, Mr. Kelly from his local, Mr. Keehn and Mr. Dick Metzger.

Q. And was it the seventh or the ninth? A. I would have to look in my book, because I do keep good records, but I don't have my last year's book.

Q. Where was that meeting held? A. Somewhere next to the air-

91 port. I don't know exactly.

Q. LaGuardia Airport? A. Yes.

Q. Can you tell us whether or not there was any mention made, to your knowledge, made by any party referring to the possibility of a strike, lock-out, or any other kind of action, by any of the parties? A. No, I don't. I never heard anything, any statements like that. No.

Q. Anything said by Mr. Keehn, concerning possibility of strike, lock-out or other action? A. Yes, Mr. Keehn did make a statement, I believe.

Q. What did he say? A. I believe he said something similar to, if I do it this way, they are going to strike me, and if I do it that way, they are going to strike me, regarding the two unions concerned.

Q. Has the union taken any – between the time of that meeting and the time of the filing of the charge in this case, has the union, Local 447 taken any action either picketting or striking against any of the Hertz facilities? A. No, they have not.

Q. Can you tell us precisely what the claim of Local 447 is, as to the
92 work that is involved in this proceeding? A. Well, to the best of my knowledge it is that we claim all the work that is nonmilk trucks in and around the Maspeth area.

Which is under our jurisdiction, under our contract, also.

MR. ENGLEHART: I have no further questions of the witness.

HEARING OFFICER: Mr. Obel?

CROSS-EXAMINATION

BY MR. OBEL

Q. Mr. Touanen, when did you say you started with District 15? A. On or about in '69 or '70.

Q. 1969 or '70? A. I believe it was in '69. Early part of.

Q. How long have you been in your present job? A. As a business representative?

Q. Right. A. Oh, approximately two years.

Q. What were you prior to that time? A. An organizer.

Q. When you were an organizer, you didn't have any responsibility for servicing the Hertz location? A. Not for servicing. We had responsibilities –

Q. I understand you had other responsibilities, but no contract servicing
93 responsibilities? A. On occasions we would do it, yes. When –

Q. Who was the business representative prior to you? A. I –

Q. Who had responsibility for Hertz? A. I believe Bernard Kelly.

Q. That is Barney Kelly, who is sitting here now? A. Barney.

Q. I see.

Do you have a system of shop steward in your union? A. Do we have shop stewards?

Q. Yes. A. I don't know what you mean by system.

Q. Do you have shop stewards? A. Yes, we do.

Q. Do you have shop stewards who work for Hertz? A. Yes, we do.

Q. Where are they located? A. At mostly every garage we have.

Q. You have shop stewards in the Long Island City district, don't you? A. Yes, we do.

Q. You have had them for as many years as you have had a relationship with Hertz, haven't you? A. I believe that to be true.

94 Q. How many do you have assigned to the Long Island City district? A. Right now?

Q. Yes. How many shop stewards? A. Well, I have a shop steward over there, but I have another shop steward that is a general shop steward, for most of the areas, that if a problem gets where by that the shop steward at the Long Island City area can't handle it, we call in the chief shop steward.

Q. So you have two, presently? A. Well –

Q. With responsibility for that area? A. I would say so, yes.

Q. Have you ever had more than two for that area? A. Not to my knowledge.

Q. And Long Island City district includes the Maspeth facilities, doesn't it? A. Well, if it did, we wouldn't be sitting here, would we?

Q. I guess now. So the answer is yes, is that correct? A. Yes.

MR. OBEL: Can we stipulate that Richard Metzger is the corporate director of labor relations for Hertz Corporation?

MR. SIMON: Yes.

95 MR. ENGLEHART: Yes. I didn't know he was still with the company.

MR. OBEL: He is there. Can we agree to that title?

MR. SIMON: Yes.

HEARING OFFICER: Does everyone agree? All right; it's accepted.

Q. I believe you stated that at a meeting prior to May of 1973, at which you were present, Mr. Metzger stated that it was his belief that nonmilk maintenance work was 447 work? A. Yes.

Q. Is that your recollection? A. That is correct.

Q. But the assignment of – for all of these years, has been to 584, Hertz' assignment; isn't that correct? A. Not to my knowledge, no.

Q. It is not correct? A. Not to my knowledge.

Q. The assignment all these years has been to 447? A. I wouldn't say that. What you asked me was a question. Not to my knowledge, either.

Q. Do you have any knowledge on this matter? A. Yes, I did some background on –

Q. Do you have any – do you have any direct knowledge, knowledge, your own observations? At Maspeth. A. In regards to what?

96

Q. The work done at Maspeth. Maintenance and repair work. Have you been there and observed it? A. Yes, I have.

Q. Who performs the work? A. I couldn't say. I don't know. I didn't speak to the people.

Q. Have you been there and observed the work being done? A. Yes, I have.

Q. Who has been doing this work? A. I have no knowledge.

Q. You don't know who the employees were? A. I don't know who they were.

Q. You don't know what union represented them, or whether they were union represented? A. I believe at the time that I went past the location over there, they belonged to 584, yes.

Q. When was that time that you went past that location? A. Oh,

within the past month. Several times.

Q. That is after Mr. Metzger made that statement that you just testified to? A. The past month would be, yes.

Q. Yes. That is the only time you have been there? A. No. I
97 stopped past there whenever I am – whenever I am in that area, I stop there. I am assigned to that area, also.

Q. Okay. Is it possible, Mr. Touanen, that Mr. Keehn stated to you that Hegeman-Holland was not a particularly profitable account, and therefore the lease might not be renewed, rather than that it was going out of business? A. It is possible.

MR. OBEL: Can the witness be shown Company's Exhibit 1, please?

HEARING OFFICER: Yes.

Q. Have you ever seen that document before, Mr. Touanen? A. I believe so.

Q. Did you see it before or after the November, 1973 meeting, about which you testified? A. I couldn't recall.

Q. You can't recall. Does the date on the letter help you recall? A. Well, I would imagine if it was dated after the meeting, I had to see it after the meeting.

Q. So it does help you recall you saw it after the meeting? A. I would say so, yes.

Q. You didn't respond to it, did you? A. It wasn't addressed to
98 me.

Q. Can you answer the question as to whether you responded to it? A. No, I did not.

Q. Okay. Does Local 447 intend to strike or picket Hertz at any time, over the Maspeth dispute? A. I don't know what you mean, over the Maspeth dispute.

Q. Over the question as to who performs work on maintenance and repair work, on nonmilk trucks?

MR. ENGLEHART: Can I have the questions read back?

(A portion of the record was read back.)

MR. ENGLEHART: I am going to object to that question.

MR. OBEL: On the grounds of what? This is a business representative for that union.

I want to know whether there are any present plans to do that.

MR. ENGLEHART: I take my directions from the Hearing Officer.

HEARING OFFICER: Would you state the reason for your objection?

MR. ENGLEHART: He is talking about something that is in the future, en futuro.

We are talking now about a charge that has been filed on January, I think
99 it was 14th, 1974, and those are – it is to that which we are addressing ourselves, that issue, at that time.

MR. OBEL: This charge is still pending. I have asked the witness whether there are any present plans to strike Hertz or picket Hertz over this.

He has already testified in the past there were no such threats.

HEARING OFFICER: Do I understand that you are rephrasing your question now as to present plans.

MR. OBEL: Yes. If it wasn't clear when I asked it, it should be clear now. Are there any present plans?

MR. ENGLEHART: I object to that question.

MR. OBEL: I believe you have been overruled.

HEARING OFFICER: Now you are objecting to the rephrased question?

MR. ENGLEHART: Are there present plans to engage in a strike?

HEARING OFFICER: Your objection is overruled.

Q. Would you please answer that? A. As far as I am concerned, I

would have to check back again with my business manager, the only plans we have now in proceeding are an arbitration case going, in regards to this case.

Q. So you have, as far as you are concerned, the union has no present

100 plans, or you don't have any plans?

MR. ENGLEHART: That has been asked and answered.

MR. OBEL: This is cross-examination.

MR. ENGLEHART: It has been asked and answered.

MR. OBEL: That is a different question. I am trying to understand the witness's answer.

HEARING OFFICER: Go ahead.

A. My answer is, I have to first check back with my business manager, of my local, before I make any kind of a move.

Right now, our plans are that we have an arbitration case pending over this Maspeth dispute.

Q. So you know of no such present plans; is that correct? A. I would imagine that would be my answer, yes.

Q. Your business manager is who? A. I can't answer for him.

HEARING OFFICER: What is his name?

Q. Your business manager is who? A. Bernard Kelly.

Q. That is the gentleman who is present in the room, and who has previously testified? A. Correct.

Q. If anybody in the union would know what the present plans are, he would know?

101 MR. ENGLEHART: Objection.

MR. OBEL: On what grounds?

HEARING OFFICER: What is the basis for your objection, Mr. Englehart?

MR. ENGLEHART: Maybe somebody else – maybe there is somebody else who would know or not know.

MR. OBEL: I am asking this witness.

HEARING OFFICER: To the best of your knowledge. Overruled.

A. I cannot answer for Mr. Bernard Kelly.

Q. I am not asking you that. I am asking you if anybody in the union would know, would he be the one who would know? A. That you would have to ask Mr. Bernard Kelly.

Q. Don't you know whether he would know? A. He has bosses, too, I would imagine, too. I think that –

Q. Okay. A. I think that question would have to be directed to Mr. Kelly.

MR. OBEL: No further questions.

HEARING OFFICER: Mr. Simon?

MR. SIMON: No questions.

HEARING OFFICER: Before you leave, wait a minute. I would like to understand better your claim. Are you claiming the nonmilk trucks that are now being serviced in the Hegeman-Holland plant? A. Yes. All the non-
102 milk trucks in that area.

HEARING OFFICER: Even though they are now inside the plant. Or are you just claiming then when they are across the street or outside of that place?

THE WITNESS: In both locations, yes. All the nonmilk trucks in the Maspeth area.

HEARING OFFICER: Mr. Englehart, any further questions?

MR. ENGLEHART: No.

MR. OBEL: None.

HEARING OFFICER: Mr. Simon?

MR. SIMON: No, no questions.

HEARING OFFICER: You are excused.

(Witness excused.)

* * * * *

106 Whereupon,

JOSEPH BARONE,

a witness, called by and on behalf of Local 584, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIMON

Q. State your full name and address for the record, please. A. Joseph

107 Barone, B-a-r-o-n-e, 265 West 14th Street, New York.

Q. Mr. Barone, by whom are you employed? A. Local 584.

Q. In what capacity? A. Business representative.

Q. How long have you been so employed? A. Since August 1st of 1961.

Q. Prior to that, by whom were you employed? A. Holland Farms.

Q. Does Holland Farms bear any relationship to the firm that has been identified here as Hegeman-Holland? A. Yes.

Q. What is that relationship? A. It is the same company.

Q. In what capacity were you employed by Holland Farms? A. As a driver.

Q. For what period of time. A. From about 1936 until 1961.

Q. During the period of your employment with Holland Farms, did you have any union position? A. Yes. Shop steward. For both.

Q. For both what? A. Holland Drivers and when Hertz come into the picture in 1960, I was the shop steward for the Hertz garage.

108 Q. That includes shop steward over the mechanics and mechanics' helpers that we are talking about here today? A. Yes.

Q. Prior to Hertz coming in, in about 1960, by whom were the mechanics and mechanics' helpers utilized to maintain the Holland truck fleet employed?

A. They were employed by Holland Farms.

Q. When Hertz came into the picture, what is it that happened? A. They negotiated a contract with Local 584, and the mechanics that were then working for Holland Farms, went into the Hertz Corporation, with all their seniority, vacation rights, and everything else.

And Hertz signed a contract with Local 584.

Q. Has Local 584 had a collective bargaining agreement with Hertz, covering the mechanics and mechanics' helpers, at the Maspeth location of Holland Farms, since that time? A. Yes.

Q. At the time Hertz took over the mechanics and mechanics' helpers previously employed by Holland, were those mechanics and mechanics' helpers, utilized on nonmilk trucks, as well as on milk trucks? A. Before they

109 were taken over by Hertz?

Q. Yes. A. No.

Q. Did there come a point in time in which they did become utilized by Hertz, for the maintenance and mechanical work on other than milk trucks? A. Yes. About six or seven months later.

Q. Six or seven months later than what? A. Than when they took over in 1960, I believe they took over, and in June or sometime around there, they started to bring in outside trucks.

Q. Where was the work performed on the nonmilk trucks that you have just described? A. Right in the garage of the Hertz Holland garage.

Q. The employees utilized to perform work on those nonmilk trucks, were whom? A. Local 584 mechanics and helpers.

Q. Were they the same mechanics and helpers that were utilized to perform the work on the milk trucks? A. Yes.

Q. Did there come a point in time when the number of nonmilk trucks serviced by the mechanics and helpers employed by Hertz, at the Maspeth

garage, grew to a sizable number? A. Yes. At one time we had anywhere from a hundred to 150 nonmilk trucks.

110 Q. What period of time was that? A. I would say in about 1963 or '64.

Q. For what period of time did the servicing of that number of nonmilk trucks continue to be performed by the Local 584 mechanics employed by Hertz? A. Then we started to lose some gradually, and I would say in about 1967 or '68 it fell down quite a bit.

Q. To approximately what number, if you can say? A. Maybe 75 or 80. Just kept dropping right down, right along. And it is much less than that today.

Q. It has dropped to the point today, where it is as the Hertz witness described it earlier; is that correct; A. He said 35 today. I don't know what it is today, but it has dropped.

Q. It is approximately that number? A. Right. It has dropped.

Q. During that period of time when the number of nonmilk trucks serviced by the Hertz mechanics and mechanics' helpers totalled between 100 and 150, was all of the mechanical work on those trucks performed within the garage, within the Hegeman garage? A. No. In about 1964, or somewhere around there, they rented this lot across the street.

Q. Is that the lot – A. Where the quonset is.

111 Q. The lot with the quanset hut that we have talked about? A. Right. With a fence around it.

Q. Who leased it? A. Hertz did.

Q. What happened? A. We moved some of our people from the garage, into this quanset, and they don't work on milk and nonmilk trucks, in that quanset, and on that property.

Q. Were the employees that were moved over to the quanset hut,

utilized exclusively over there, or was there any interchange? A. No. They used to go back and forth at times.

Q. Were there any tools or mechanical equipment stored in the quanset hut, at the time – A. Yes.

Q. Please let me finish the question. At the time that the mechanics and helpers were working there, on the milk and nonmilk trucks? A. Yes, there was.

Q. Did there come a point in time when the quanset hut stopped being used for that kind of repair work? A. Yes.

Q. When was that? A. When the business fell down, I don't think
112 they needed it any longer, so they used it to store trucks, to lease and rent trucks from that property, and they were doing and still are doing some minor repairs on that property.

Q. During the period of time that the tools were stored in the quanset hut, and the repair work was being done over there, by the 584 mechanics, who would do work there and in the garage, was the kind of mechanical work that was being done in the lot, the same as the mechanical work that was being done in the garage? A. Yes.

Q. It was being done by the same employees? A. Right.

Q. Are any of the mechanics or mechanics' helpers now employed by Hertz, among that compliment of mechanics and mechanics' helpers, who previously had been employed by Holland? A. Yes.

Q. How many? A. I would say four.

Q. By the way, at the time Hertz took over the operation from Holland, how many mechanics and mechanics' helpers were taken over by Hertz? A. About nine. Eight or nine.

113 Q. In that the total number that had previously been employed by Holland. A. Right.

Q. Mr. Barone, are you aware of any agreement, written or verbal, between Local 584 and Local 447, limiting the jurisdiction of Local 584 to the milk trucks serviced out of that location? A. No.

Q. Are you aware of any agreement written or verbal, between Local 584 and Hertz Corporation, limiting the jurisdiction of Local 584 to the milk trucks, at that location? A. No.

MR. SIMON: No further questions.

HEARING OFFICER: Mr. Englehart?

MR. ENGLEHART: Could I have a minute, please?

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: Back on the record.

Q. Mr. Barone, with regard to this leased property across the street, were there any body men employed over there? A. Employed over there?

Q. Yes. A. No.

114 Q. None at all? A. No.

Q. Were any stationed over there? A. What Hertz did have was a body man on wheels, and whenever a truck had a dented fender or some body work to be done, we would allow the body man to come in and do his work and leave.

It was an understanding and we let the body man come in, whenever we had body work, because 584 has no body man.

Q. Who was the understanding with, Mr. Barone? A. The understanding, we would let them come in, and the understanding was with different people in the Hertz Corporation, that we had no body man, so if you want to bring in a 447 man to do the body work and go, it was understood they could do it.

And they have done it in quite a few places. But he was on wheels.

Q. You don't know who it was at Hertz, who had this understanding with 584? A. I don't recall offhand.

Q. Do you know of any understanding with people from Local 447, to permit the body man on wheels to come in and do this work? A. I have never spoken to anyone in 447. In fact, I only met them for the first
115 time, I think, in November.

Q. In 1960, when Holland Farms, when Hertz took over the Holland Farms Trucks, and the employees you testified who had worked for Holland Farms, were then to be employed by Hertz, was there a pension agreement covering the employees who had worked and were employed by Holland? A. Yes. We have had a pension since 1951.

Q. Did the employees who were taken over by Hertz, who having worked for Holland Farms, were they given service credit for the years th[illegible] worked for Holland Farms, with the Teamsters pension fund? A. [illegible] They were in the pension fund and they were given the service for the time they worked for Holland Farms, yes.

They lose nothing by going to work for Hertz.

* * * * *

118 CROSS-EXAMINATION

BY MR. OBEL

Q. I believe you testified, Mr. Barone, that when Hertz took over the Holland Farms – is that correct, Holland Farms? A. Right.

Q. That they took over eight or nine Local 584 represented mechanics? A. Something like that. The exact number, I don't remember.

Q. I believe your testimony was eight or nine? A. Right.

Q. Of the original eight or nine, that Hertz took over, four are still there? A. Still there. I can name them, if you want.

Q. No, I don't need the names. What was the maximum size of the

compliment of 584 represented employees, at Holland Farms, from 1960, forward? Was it never any bigger than eight to nine? A. At one time we had 22 people.

Q. What is it today? A. Today it's about 18.

Q. So, I take it there were new employees hired by Hertz? A. Yes.

Q. Who become members of 584? A. Yes.

Q. And were represented by that union? A. Yes.

120 Q. Now, I believe you testified that at some point there was 150 non-milk trucks. How many milk trucks were that at that time? A. At that time I would say there was 200 or better. But the milk business has done down quite a bit.

Q. When the nonmilk fleet fell to 75, how many milk trucks were there at that time? A. I would say maybe 170, 175.

Q. Can you tell me, please, what is a body man on wheels? A. A body man on wheels? He has a truck in which he carries his tools to do fender and body work. He carries different paint, and he comes in a truck, and he pulls his truck in there and repairs a fender or whatever had to be fixed on the body.

Q. Why does he have a truck? A. Because he is not stationed at that location.

Q. Oh. In other words, he makes a circuit of some sort? A. He goes to all the different garages.

MR. OBEL: No further questions.

HEARING OFFICER: Mr. Simon?

MR. SIMON: No questions.

HEARING OFFICER: Mr. Englehart?

MR. ENGLEHART: One moment.

121 No further questions.

HEARING OFFICER: Thank you, you are excused.

(Witness excused.)

* * * * *

125 THE HEARING OFFICER: Back on the record.

MR. SIMON: Miss Johnson, I would also propose a correction of an error in the transcript on Page 111, lines 8 to 11.

The answer as reported in the transcript is "We moved some of our people from the garage, into this quanset, and on that property."

126 The answer should have read as follows:

"We moved some of our people from the garage into this quanset, and they worked on milk and non-milk trucks in that quanset and on that property."

And I believe I have a stipulation from all parties that the record should be so corrected.

THE HEARING OFFICER: Mr. Englehart, do you so stipulate?

MR. ENGLEHART: Yes.

THE HEARING OFFICER: Mr. Obell, do you so stipulate?

MR. OBELL: Yes.

THE HEARING OFFICER: Mr. Simon, do you so stipulate?

MR. SIMON: Yes.

THE HEARING OFFICER: The stipulation is received.

Mr. Englehart, do you want to call a witness?

MR. ENGLEHART: Yes.

Mr. Marsh.

THE HEARING OFFICER: Raise your right hand, please.

Whereupon,

PHILIP G. MARSH

called as a witness, and having been first duly sworn in by The Hearing Officer, was examined and testified as follows:

THE HEARING OFFICER: Please be seated.

State your name and address for the record.

127 THE WITNESS: My name is Philip G. Marsh. I live at 211 Albon Road, Hewlitt Harbor, Long Island, New York.

DIRECT EXAMINATION

BY MR. ENGLEHART

Q. Mr. Marsh, by whom are you employed? A. I'm self-employed. I'm president of my own company.

Q. Were you ever employed by the Hertz Corporation or any of its subsidiaries? A. Yes, I was.

Q. Would you tell use by whom you were employed, what subsidiaries if there were any subsidiaries, and when? A. I was first employed by the Hertz Corporation in 1956 when Hertz acquired Rentways, a company of which I was a general manager.

I left Hertz in 1961 – in 1961.

I became Executive Vice President of National Auto Renting Corporation.

I was called back to Hertz to come back to Hertz and offered a position as President of a subsidiary corporation, Rentways.

And I subsequently became president of Hertz Equipment Rental Corporation.

I left the Hertz Corporation in approximately 1970 to enter my own business.

128 I'm president of Trans Service Lease Corporation.

Q. You said you left Hertz in '61 to become president of National Auto Rental? A. Executive Vice President.

Q. Executive Vice President, I'm sorry.

And then you became president of Rentways, a subsidiary? A. Of Hertz.

Q. When was that? A. In 1963 to about 1965.

Q. And then you were president of Hertz Equipment Rental? A. Corporation. From 1965 to 1970.

Q. Are you familiar with or were you familiar with Metropolitan Distributors Incorporated? A. Very. I competed with them for many years.

Q. Did there come a time when there was a relationship between Hertz and Metropolitan Distributors? A. Hertz acquired Metropolitan Distributors approximately six months before they acquired Rentways and other companies.

Q. When was that? A. I beg your pardon?

Q. And that was then? A. In 1956, I believe.

Q. In your capacity with Hertz, had you become familiar with or had
129 any relationship with Holland Farms? A. I did.

Q. And what kind of a company is Holland?

What do they do? A. Wholesale dairy.

Q. And when did you enter into any kind of relationship with Holland?

When was that? A. It was approximately 1959. I was acting Regional Manager for Hertz Truck Leasing in New York.

And I – and our sales manager and – were in preliminary negotiations for a lease contract.

Q. To lease Hertz Trucks to Holland? A. Holland Farms, yes.

Q. Up until that time do you know whether or not Holland leased trucks or owned their own trucks? A. They did not.

They owned their own trucks. They did not lease trucks; no.

Q. At this time when you said you were discussing this matter with Holland, did you or did Hertz have a collective bargaining relationship with Local 447 of District 15 of the I.A.M.? A. They did.

Q. And can you tell us what the – if you recall – what the collective
130 bargaining unit was at that time? A. Well, in the broad vein, it covered –

encompassed all mechanical employees and it covered all locations that Hertz truck leasing had in the Metropolitan, New York area.

Q. Which included Long Island City? A. On, yes.

Q. Maspeth? A. Yes.

Q. Now, did you enter into any kind of an agreement with Holland regarding the leasing of Hertz trucks to it? A. Where the negotiations took what I would term a serious vain, being aware of the complexity of the labor situation, I met with Mr. Froman Holland and Sidney Bagdon.

Q. And will you tell us are these gentlemen – were these gentlemen from Holland Farms? A. Yes.

Q. And what was the nature of your discussion? A. Well, in my capacity as official of Hertz I was discussing the overall aspect of the lease agreement.

It encompassed a physical location that we would lease from them across the street on 58th Street.

Q. 58th Street where? A. In Maspeth.

It also encompassed the – I explained to them that our labor agreement with Local 447 was an overall agreement, and I was very candid with them.

131 I said before we could proceed with an executed agreement, lease agreement, I would have to meet with Local 447, and they or I would have to meet with Local 584 to make sure there was a mutual understanding.

Q. Why would you have to meet with Local 584?

What was their connection?

What was their relationship to this matter? A. Local 584 had a contractural arrangement with Holland Farms.

Q. Now, did you meet with Local 447 with regard to this problem?

A. Yes, I did.

Q. And with whom did you meet? A. First I met with Mr. Arthur Hollister.

Q. Who is Arthur Hollister? A. He was Vice President of Local 447 and the head of that District or that Local.

And I subsequently –

Q. What was the discussion with Mr. Hollister?

What did you tell them?

THE HEARING OFFICER: Could you pin down when the discussion was?

MR. ENGLEHART: Yes.

BY MR. ENGLEHART

Q. When was this conversation, to the best of your recollection? A.

132 You see, I'd have to say again, if the contract was executed at the end of – I know the contract went into effect in the winter.

Q. Which contract, with Holland? A. With Holland. So I assume the discussion was a month or two months prior to December.

Q. Of which yea.. A. I think the contract took effect in the winter of 1960, so I assume – I assume that the – if it's '59, if it was December of '59, then it was like in October of '59.

If it was December of '60, then it was October sometime.

I am a little hazy there.

MR. OBELL: Can we go off the record a minute?

THE HEARING OFFICER: Off the record.

(Discussion off the record.)

THE HEARING OFFICER: Back on the record.

BY MR. ENGLEHART

Q. Now, tell us what was said at that meeting with Mr. Hollister?

A. I discussed the – what in my mind was an area of concern.

I had a collective bargaining agreement with Local 447 that encompassed all mechanics.

I wanted an understanding that we could have an exemption because it

133 was made clear to me by Mr. Froman Holland and Mr. Sidney Bagdon that they had an agreement with Local 584.

I didn't feel that they would have a problem because there was a precedent to that, there were other situations like it, and I was referred to Barney Kelly by Mr. Hollister because he was the delegate that handled all the Hertz union.

Q. And did you meet with Mr. Kelly? A. I did meet with Mr. Kelly.

Q. Can you tell us when you met with Mr. Kelly? A. Again it was either a couple of days after meeting with Hollister or a week later, somewhere in that span of time.

Q. Can you tell us what was said at that meeting?

Where was it held? By the way, do you recall? A. I don't recall.

Q. Do you recall where the meeting was held with Mr. Hollister? A. I really don't recall.

It could have been in the coffee shop or it could have been at my office or it could have been at the union office.

I just don't recall.

134 Q. What was said at that meeting? A. I approximated, if I recall, the number of vehicles involved.

I explained that they were totally wholesale and retail milk.

I explained there was an agreement between the milk company and Local 584.

The milk company was willing to enter into a lease agreement with Hertz if it didn't violate or create a problem for them with their agreement with Local 584.

I described the area that would be given to us, leased to us on 58th Street for repair shop facilities, which was directly opposite the plant.

I assured both Mr. Hollister and Mr. Kelly that this specific unit was for the milk operation.

I received their blessings to proceed to see if I could get a lease agreement.

Q. At anytime with regard to the lease agreement with Holland, did you discuss the matter with anyone from Local 584? A. I did.

Q. And can you tell us with whom you discussed that? A. I discussed it with Mr. John Kelly.

Q. Is he in this room now? A. I beg your pardon?

135 Q. Is Mr. Kelly in the room now? A. Yes. I discussed it – I just don't recall the gentleman's name.

There was a delegate – not Mr. Barone – Mr. Barone I believe, was a shop steward then – I don't really recall the delegate's name.

Q. Can you tell us when this discussion took place? A. Again I have to be vague.

It's in that span of time prior to an executed agreement.

Q. Was it before or after your conversations with Mr. Hollister and with Mr. Kelly, Mr. Barney Kelly? A. Definitely after.

Q. Do you know where the conversation took place? A. I don't recall.

Q. Tell us what was said?

And by whom? A. It may have been in the 584 office. I just don't recall.

Q. Tell us what was said and by whom, please? A. My recollection was that I explained to Mr. Kelly of my track record in truck leasing, I starting coming out of service in '43, I had a long relationship with both machinists and Teamsters.

I had an opportunity to enter into a lease agreement with Holland Farms.

136 I had a – the blessing of Local 447 to proceed for that unit, and as normal I would ask are there any regulations any format, any program or anything involved that I should be aware of.

If I recall I was told infacticly that whatever the rights of the men, that they had with Holland Farms under their collective agreement, must prevail, that they cannot have any loss of seniority, loss of rights, loss – in any shape or form.

It would have to be as it were in a continuing contractural arrangement.

Q. Was any discussion as to the – withdraw that.

The 584 men at Holland, do you know whether or not the mechanical repair – do you know whether or not they did or performed the mechanical work on the Holland Trucks? A. Yes.

Q. And they were to continue to do the repair work –

MR. SIMON: Objection. The witness is being lead.

MR. ENGLEHART: I'll withdraw the question.

BY MR. ENGLEHART

Q. Was there any discussion as to what the duties of the 584 men would be who were working at the Holland Facility? A. Well, the unit involved in maintenance and repair and servicing would continue to do the maintenance and repair and servicing.

137 Q. Was there any discussion relating to the 584 men servicing or repairing trucks other than those which were leased to the Holland Farms? A. Absolutely not.

Q. There's no discussion at that? A. No.

Q. Do you know whether or not, to your knowledge, while you were still with Hertz, that 584 men repaired any trucks at the Holland facility other than milk trucks? A. During the time that I was there the answer is no.

The amount of space that we had on the 58th Street side was very limited.

If I recall they had some internal unit repair, whether they were vending machines or – so that the – and the amount of man power that we had was specifically assigned to the repair and service of the – what was then not only Holland, we had signed some other milk distributors that were bottling – that Holland was bottling for, but right there at milk city.

So they did all of their repair work, and service work.

Q. Did they perform work on trucks other than the milk city trucks? I'm referring now to the 584 people? A. At that location?

138 Q. Any place. A. The only area of overlap is occasionally if there was a road call, and if I recall that came to some question as to who should do what.

It was always an effort to use 447 men to answer road calls for 447 trucks, and 584 men to answer all calls for 584 vehicles.

There were times there would be such an inconvenience to the customer that if a truck broke down outside the door so to speak, at milk city, a 584 man would repair that truck – running repair.

Q. For the most part who made the road calls on trucks other than the trucks leased to Holland and the other milk distributors.

MR. SIMON: Could you place it in time, please?

Q. During the period of time when you were with Hertz –

MR. SIMON: You're talking about the various times he was with Hertz?

MR. ENGLEHART: Yes.

A. The only time that I can attest to is the '59 to '61 roughly.

Q. During that period of time who serviced the trucks, the road call trucks for the most part which were not leased to Holland Farms, or the other milk distributors? A. They were serviced by 447 mechanics.

139 MR. ENGLEHART: I have no further questions of the witness.

THE HEARING OFFICER: Mr. Obell?

MR. OBELL: I'll let Mr. Simon go ahead.

THE HEARING OFFICER: Mr. Simon.

CROSS EXAMINATION

BY MR. SIMON

Q. Mr. Marsh, it is your testimony that during the period of time you were there the 584 working in the Maspeth facility did not perform work on non-milk trucks?

Was that testimony limited to this period of time you just described, 1959 to 1961? A. Yes. That's the only period of time I'm aware of.

Q. You have no knowledge as to what transpired with regard to the work being performed by the 584 employees at the Holland location after 1961? A. None whatsoever.

Q. Do you recall when it was that you left in 1961? A. May, somewhere in there – May or June.

Q. So that if the implementation of the agreement between Hertz and Holland took place as you've described it in the winter of 1960, the only period of time that you have any personal familiarity with is the six or seven months between that time and the time that you left in May of 1971 –

140 May of 1961, I'm sorry? A. If it was the winter of 1960, that is true.

If it was the winter of '59, it's, you know – I just don't recall.

MR. SIMON: I have no further questions.

MR. OBELL: No questions

THE HEARING OFFICER: Mr. Englehart.

MR. ENGLEHART: No further witnesses – no further questions, and no further witnesses.

THE HEARING OFFICER: Thank you.

(Witness excused.)

MR. SIMON: The union has no witnesses – 584 has no witnesses.

THE HEARING OFFICER: Do you have another witness?

MR. ENGLEHART: No.

THE HEARING OFFICER: Oh, is there anything further any of the parties wishes to present?

Mr. Obell, on behalf of the Petitioner?

MR. OBELL: What did you just say?

THE HEARING OFFICER: Do you have anything further you wish to present?

MR. OBELL: Not in the way of witnesses.

I do wish to make a brief statement on the record.

I don't know if you want it now?

THE HEARING OFFICER: Now.

141 MR. OBELL: Now.

I think it's – it should be clear to the reader of the record what the facts are.

I think we've got a clear record as to what is going on now, what is to go on, and what has gone on in the past.

The position of Hertz, as I stated, I think it was off the record, but I want now to state on the record, is simply the position of an employer who is caught right in the middle with – between two unions with which it has had and which wishes to continue to have a harmonious relationship.

We wish this dispute to be resolved by the Board on the basis of the normal 10K standards and the facts of this record.

We don't wish the Board to think that we are indifferent in this case.

We are not indifferent. We are in a very sensitive position.

We are the charging party.

We want this peacefully resolved. We want it properly resolved.

Let me point out that this case, there are only two alternatives – dispute

is as to non-milk trucks, which are going to be physically separated from the milk fleet at the Maspeth complex.

142 Either 584 will do this work or 447.

The worse possible result in this case is for the Board, and I believe it will be without any justification in the record, and without any justification in 10K standards, to split non-milk trucks between the two unions.

I think either 584 has them or 447 has them.

And we just want to say to the Board that it would cause Hertz operational chaos and disaster if there was any split.

So we don't wish the Board to feel I believe that Hertz indifferent to the outcome of this case.

We want a peaceful proper resolution to this dispute based upon facts of the record and 10k standards.

Now, in terms of filing a brief, because of the sensitive nature of the relationship between the – or among the three parties, it is possible that Hertz will not file a brief.

Again, that is not because Hertz is indifferent.

That is because of the sensitive nature of the tripartite relationship here.

It's inescapable that one party or the other will take any brief that we would write and submit as an advocacy document.

It's entirely possible that we will not file a brief.

143 But we think that the record is clear, and that the Board should make a determination based on 10K standards, under 10K standards, the facts of the record and to avoid any compromise or splitting which would cause us operational disaster, and could well result in the closing of part of the facility.

That's all I have to say.

THE HEARING OFFICER: Thank you, Mr. Obell.

Is there anything further you wish to present, Mr. Englehart on behalf of

Local 447?

MR. ENGLEHART: Not in terms of evidence.

We would submit a brief.

THE HEARING OFFICER: No more oral testimony?

MR. ENGLEHART: No oral testimony.

You want my position, I'll be glad to give that to you.

THE HEARING OFFICER: Yes. Could you restate your position.

MR. ENGLEHART: In doing that, I'm not quite sure I understand the company's position.

I wonder if I may ask Mr. Obell a question as to something he just stated.

THE HEARING OFFICER: Should we go off the record?

MR. ENGLEHART: We can go off the record.

THE HEARING OFFICER: Off the record.

144 (Discussion off the record.)

THE HEARING OFFICER: Back on the record.

Off the record the parties discussed Mr. Obell's statement on behalf of Hertz and he wishes to make a further statement at this time.

MR. OBELL: Yes.

I want to be crystal clear.

I want the parties to be crystal clear, and the Board to be crystal clear on the position of Hertz.

As far as Hertz is concerned, what we're talking about here – disputed work – is the maintenance and repair work performed on non-milk trucks at the Holland complex, across the street from the main plant.

Now, as far as Hertz is concerned that is the issue in this case, and the Board has only two alternatives, either that work will be assigned or awarded to employees represented by Local 584, or the work will be assigned or awarded to employees represented by Local 447.

It would be an absolute disaster if with respect to that part of the complex that maintenance and repair work on non-milk trucks, the Board somehow without any justification in the facts of record gave half of it to 447 and half of it to 584 employees.

Two different groups with a different contractural history with Hertz and others would then be working side by side across the street from the main
145 plant doing the same kind of work on non-milk trucks.

Hertz believes there is only one alternative – there are only two alternatives, it's either 447 work or it's 584 work.

It can't be the work of both of these groups.

THE HEARING OFFICER: Your references are to the Holland location, right?

MR. OBELL: My reference is to the Holland location in Maspeth, but the physical location across the street from the main plant where the non-milk trucks will be eventually segregated physically from the milk trucks.

It would be an absolute disaster if we had a mixed maintenance and repair group there.

By mixed, I mean members of each union working side by side.

it's go to be one or the other based on the facts of record and the normal 10K standards.

THE HEARING OFFICER: Thank you, Mr. Obell.

Mr. Englehart, is there anything you wish to state;

MR. ENGLEHART: Yes.

I'm going to try to characterize the testimony, but the union's position is that all non-milk trucks, wherever they're located in the Metropolitan area, are covered by the existing collective bargaining agreement with Local 447.

146 And that – also the record as a whole will show was the intent of the parties were when the Hertz Corporation or a subsidiary entered into a lease

agreement with Holland Farms.

Further, that the area across the street from what has been termed Milk City or the Holland Barn is not even Holland property.

I think it's Levitz, is the owner or the lessor of that property to Hertz, and makes no difference whether or not the property is the Levitz' property or any other property within the Metropolitan area because if the Board determines that 584 has jurisdiction over non-milk trucks at the Levitz property, I guess it's the easiest way to describe it, all the employer would have to do, if it wanted to, I'm not saying it will, is lease other properties in the vicinity, and say this is located right around the Milk City facility, and consequently let's use 584 people, and just extend what the – what their position apparently is now.

I think that in order to promote the stability, industrial stability which the Act calls for, and which the – the harmony which counsel for the company – the employer wants, would require a clear demarkation between the jurisdiction of the parties.

And there's no question that until Hertz leased trucks to Holland Farms or Holland Hegman, until that time, 584 people never touched a non-milk truck leased by Hertz or its predecessors

THE HEARING OFFICER: Thank you, Mr. Englehart.

Mr. Simon, on behalf of Local 584, is there anything further you wish to present?

MR. SIMON: No.

MR. OBELL: I just want to make one short comment with respect to what Mr. Englehart has said.

I want it to be understood that there are no plans on Hertz' part to decimate 447's bargaining unit by leasing properties in the vicinity of Milk City and by that obvious tactic say it is part of the Milk City complex, and therefore

447 can no longer do it, and 584 must do it.

There's absolutely no intention on Hertz' part – I want that clear in the record – of doing something like that.

LOCAL 447 EXHIBIT NO. 1

LABOR AGREEMENT

AGREEMENT made and entered into as of the 16th day of September, 1971, by and between The Hertz Corporation, for the New York Truck Region, having an office at 501 Tenth Avenue, New York, New York hereinafter for convenience referred to as the "Employer" or "Company" and the Automobile Mechanics Local Union No. 447, District 15, International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the "Union" for and on behalf of those employees of said employer in the bargaining unit and jurisdiction of the Union.

The intention of the following agreement is to bring about harmonious feeling between the above named employer, and members, and members and officials of the above named Union, thereby assuring the Company that it will receive a fair day's work from the members of the Union in its employ and that the members of the Union will receive a fair wage for their services while in the employ of the Company.

ARTICLE I
RECOGNITION, COVERAGE & UNION SECURITY

The Company recognizes the Union as the sole bargaining agency for all employees coming under the classifications specified in second numbered three thereof.

(a) It shall be a condition of employment that all employees of the Employer in the bargaining unit hereinbefore described who are members of the Union in good standing on the effective date of this Agreement or the date on which it was executed, whichever is later, shall remain members in good standing, and those employees who are not members on the thirtieth day following the effective date of this Agreement or its execution date, whichever is later, shall become and remain members of the Union in good standing. An employee hired on or after the effective date of this Agreement or its execution date, whichever is later, shall, as a condition of employment, become and remain members in good standing in the Union on the thirtieth day following the beginning of his employment.

(b) Notwithstanding the foregoing provisions, the Employer shall not be required to discharge any employee for failure to pay his lawful initiation fees or lawful dues if the employee, within seven (7) days after the Employer receives notice by registered mail from the Union of such nonpayment tenders his dues or initiation fee, as the case may be.

(c) The Company agrees that it will notify the Union in the event it needs additional help at least forty-eight (48) hours before the vacancy is filled. Applicants for employment sent by Local Lodge No. 447 shall not be discriminated against for any reason. All new employees shall be hired on a trial period not to exceed thirty (30) days and new employees must report to the Union offices before starting work. The Company agrees to notify the Union when any new employee is hired.

(d) So far as it is possible to do so, the Company agrees to give preference to shops employing members of Local Lodge No. 447 when any outside work is performed on its automotive equipment.

(e) No employees shall be permitted to make repairs or drive a wrecker unless they are members of District 15 except when no such employees are available or if beyond Company control.

* * * * *

ARTICLE III
RATE OF PAY

(a) The minimum rates of pay shall be:

	9/16/71	9/16/72	9/16/73
1. Working Foremen	$ 5.62	$ 6.24	$ 6.86
2. Machinists, mechanics, welders, blacksmiths, electricians, bodymen, metalmen, glassmen, letterers, sprayers	5.37	5.99	6.61
3. Paint Men, Rub-Down Men, Sanders	5.00	5.62	6.24
4. Parts Men and Parts Delivery Men	4.91	5.53	6.15
5. Helpers	4.91	5.53	6.15
6. Apprentices	4.045	4.665	5.285
7. Countermen	5.37	5.99	6.61

(b) All employees whose regular shifts end after 5 P. M. and those whose regular shifts begin before 8 A. M. shall receive an additional twenty-eight cents (28¢) per hour for those hours worked after

5 P.M. and before 8 A.M. each day. This shall not apply where those hours are at overtime pay. All employees whose shift starts before 6 A.M. shall receive the premium pay for the full eight (8) hour shift. This shall not apply where those hours are at overtime pay. Shift premium shall be included, where applicable, in holiday, vacation and sick pay.

* * * * *

ARTICLE XVI
OTHER BUSINESSES ACQUIRED

The provisions of this contract shall apply anywhere the Company presently conducts operations or may in the future conduct operations. If, however, the Company shall take over the operations of any other business that already has a contract with the Union providing for higher rates of pay or better conditions of employment, such rates of pay and conditions of employment, for the employees therein covered, shall be maintained to the expiration of each contract.

* * * * *

LOCAL 447 EXHIBIT NO. 2

Metropolitan Distributors, Inc.
COMMERCIAL AUTOMOBILE RENTING
501 TENTH AVENUE
NEW YORK 18, N.Y.

July 29th, 1947 .

International Association of Machinists, District #15
Automobile Lodge No. 447
17 West 60th Street
New York 23, N. Y.

Gentlemen:-

With reference to the agreement executed between us of even date, it is hereby understood that said agreement shall be amended to include the following clause:

"The provisions of this contract shall apply anywhere that Metropolitan Distributors, Inc., presently conducts operations or may in the future conduct operations. If, however, Metropolitan Distributors, Inc., shall take over the operations of any other business that already has a contract with the International Association of Machinists providing for higher rates of pay or better conditions of employment, such rates of pay and conditions of employment, for the employees therein covered, shall be maintained to the expiration of such contract.

Your signature at the place indicated below will acknowledge your acceptance of this amendment.

Yours very truly,
METROPOLITAN DISTRIBUTORS, INC.
Leon C. Greenbaum
President

INTERNATIONAL ASSOCIATION OF MACHINISTS
DISTRICT NO. 15
BY Arthur Hallstein

BEST COPY AVAILABLE

LOCAL 584 EXHIBIT NO. 1

MILK INDUSTRY
COLLECTIVE BARGAINING
AGREEMENT

November 11, 1971 to November 11, 1973

* * * * *

2. This Agreement shall cover every employee of the Employer employed in or about a milk distributing branch, pasteurizing plant, and garage in the Metropolitan Area, as defined in paragraph 3 hereof, excluding, however, the following classifications of employees:

Branch Managers, Assistant Branch Managers, Plant Superintendents, Plant Assistant Superintendents, all non-working Foremen, Garage Superintendents, Garage Assistants, Garage Foremen, Supervisors of Credits and Collections, Sales Supervisors, Stores Department, Canvassers, all clerical help, Sanitary Inspectors, Chief Electricians, Laboratory Technicians. These exclusions shall apply, except where the Union validly represents the employees of a Company within any of these categories, whereupon the parties will negotiate for an agreement to cover said employees. In no event shall any Union employee be required to work with a non-Union man who under this agreement is required to be a member of the Union.

If any Employer should move its plant to any other location within the Metropolitan Area, or should move its depot or other facility to any other location within the Metropolitan Area, or

without the Metropolitan Area if the depot or facility is to be used for distribution within the Metropolitan Area, this contract shall remain applicable and shall cover the employees at the new location.

* * * * *

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LOCAL UNION NO. 584, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent

No. 76-4011

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 26 day of February 1976.

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Subscribed and Sworn to before me this